United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7207

B

P/S

United States Court of Appeals

For the Second Circuit

Docket No. 76-7207

PRUDENTIAL OIL CORPORATION,

Plaintiff-Appellee,

vs.

PHILLIPS PETROLEUM COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

(67 Civ. 3748 (C.L.B.))

JOINT APPENDIX

Volume III—Trial Transcript, 554-1135

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PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

New York, January 9, 1975;
10.30 o'clock a.m.

(Trial resumed.)

- -

(Jury present.)

N A T H A N M. S H I P P E E , resumed.

THE COURT: You may resume the redirect examination of Mr. Shippee.

MR. FARRELL: At the close of yesterday's episode I offered Exhibit 219 for identification which was the brochure produced by Phillips.

THE COURT: I will sustain the objection at this time. I do not preclude you from offering it at a later time when a foundation for its receipt in evidence has been established.

REDIRECT EXAMINATION (Continued)

BY MR. FARRELL:

Q Mr. Shippee, I show you a page of Plaintiff's Exhibit 215 which had been marked at pretrial as Defendant's

322 entitled "Long-Term Debt and Capital Stock" and ask you with respect to that page -- I will read you that page or part of that page:

"Authorized and issued 15 million shares of which 11 million constitues public offering first in Puerto Rico for 60 days and then open to outsiders. The balance of the 4 million shares to management."

Was the 4 million shares referred to there the shares that Prudential expected to receive of this corporation?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: I will sustain the objection unless he knows.

Q Do you know?

A Yes, I do know.

Q Was it what Prudential expected to receive?

A Yes, it was. This was the shares for management.

Q Now, Mr. Shippee, turning your attention to July 2, 1963 which was, I believe established yesterday as the date of the crash --

MR. MacCRATE: Your Honor, forgive me. That prior objection of mine related to the scope of redirect examination as well. Now he is going into entirely new

matters with respect to this proposed financing, something not covered on direct testimony.

THE COURT: I didn't understand that and the jury heard his answer and I will permit you to go into it on recross examination. I will adhere to my ruling.

Q On July 2, 1963 and with respect to the application for the quota, had Prudential done at that time as much as it thought it could do with respect to its application?

MR. MacCRATE: Objection.

THE COURT: Sustained as to form.

Q Had Prudential done everything which it could do at that point?

MR. MacCRATE: Objection.

THE COURT: Again, the objection is as to the form.

Q Well, had Prudential completed its work on the application?

MR. MacCRATE: Objection, your Honor.

THE COURT: Prudential didn't do any work, its officers --

Q Had you, its officers or Mr. Young and Mr. Willey completed all of the work that they could do on the application?

MR. MacCRATE: Objection, your Honor.

THE COURT: Are you asking for his opinion as to what it could or could not do?

MR. FARRELL: I am calling for his opinion as to the status of the application. Had the application been completed, that is all I want.

THE COURT: If he knows he may answer.

Q As far as Prudential's work was concerned?

A Yes.

MR. FARRELL: That is all I want to know.

THE COURT: I will allow that to stand.

Q Now yesterday Mr. MacCrate asked you a question and I will ask you now, when was Prudential New York organized, Mr. Shippee?

A Prudential New York was organized in 1966.

Q Is Prudential New York today a wholly-owned subsidiary of another corporation?

A Yes, it is.

Q What is the name of that corporation?

The Prudential Group, Inc.

Q Did the Prudential Group, Inc. formerly have another name?

A Yes.

Q What was the first name that it had?

A Prudential Fund, Inc.

Q Prior to that?

A Prudential Equities, I believe.

Q Was it ever known as Prudential Delaware?

A Yes.

Q And was Prudential Delaware --

A Excuse me, it wasn't known as Prudential Delaware. It was Prudential, a Delaware corporation.

Q Prudential Oil Corporation, a Delaware corporation?

A Yes.

Q At the time that Prudential Connecticut was disssolved, did Prudential Connecticut assign its assets and liabilities to Prudential Delaware?

A Yes.

MR. MacCRATE: Objection.

THE COURT: Sustained as repetitious. We heard this the first day of trial.

MR. FARRELL: At this time I want to introduce Plaintiff's Exhibit 201 about which Mr. MacCrate questioned Mr. Shippee yesterday.

THE COURT: Any objection to 201?

MR. MacCRATE: May I inquire of the witness, your Honor?

THE COURT: In the nature of voir dire on 201?

MR. MacCRATE: Yes.

MR. FARRELL: I object, your Honor.

THE COURT: May I see Exhibit 201? I seem to have misplaced my copy.

I think there was extensive examination about this letter yesterday so there is sufficient foundation for 201 to be received in evidence.

(Plaintiff's Exhibit 201 for identification was received in evidence.)

MR. FARRELL: I will read th is, your Honor.

(Exhibit read from.)

(Continued on next page.)

MR. FARRELL: Your Honor, at this time I offer Plaintiff's Exhibit 80 for identification, about which Mr. MacCrate questioned Mr. Shippee yesterday.

THE COURT: What number?

MR. FARRELL: 80.

THE COURT: Can you refer me to the page yesterday, Mr. Farrell?

MR. FARRELL: The page of the questioning?

THE COURT: About Exhibit 80.

MR. FARRELL: Your Honor, the question was -- Mr. MacCrate questioned Mr. Shippee about Defendant's Exhibit 316. Thereafter --

THE COURT: Let's stick with Exhibit 80 if you don't mind. I don't see any basis to rule differently than I did before as to number 80.

MR. MARKS: May we approach the side bar for that your Honor?

THE COURT: Yes, sir.

(At the side bar.)

THE COURT: Where in cross examination did Mr. MacCrate go into the matter of Exhibit 80?

MR. FARRELL: Your Honor, what he did was, in Exhibit 316, he asked after questioning about Exhibit 316, he asked --

THE COURT: What page please?

MR. FARRELL: Do we have a page? Get the page.

THE COURT: You may continue.

MR. FARRELL: He asked whether Mr. Shippee had been warned by the board that the matter of Puerto Rico should not continue without adequate discussion, and Mr. Shippee noted that a special meeting of the board might be necessary, at which point Mr. Shippee said that he had reported to the board -- and Exhibit 80 is the report.

THE COURT: I understand your position.

MR. MacCRATE: But I made no inquiry with respect to Exhibit 80 at all, your Honor, of which I'm aware. My only inquiry was with respect to the minutes of December 2, 1962, which is D-316.

THE COURT: I believe that the cross examination with respect to Exhibit D-316 has opened the door to the extent of permitting this witness to testify that subsequent to Exhibit D-316 and on December 28, 1962, he did submit a report and that this report may be received in evidence as bearing on his activity relating to his credibility, but certainly not as truth of whatis contained therein.

(In open court.)

THE COURT: I am prepared to rule, unless there is a problem of the foundation for the document -- if Mr. MacCrate wants to have voir dire with respect to Exhibit 80, as to whether it was given to the directors by this witness, he may do so.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, I show you a copy of Plaintiff's Exhibit 80 for identification,and ask you if you can identify the individuals, if any, to whom that memorandum was given, by name, please.

A Yes.

THE COURT: That would be at or about the date of the memorandum, to whom it was given?

THE WITNESS: Yes. The directors, the officers of Prudential Oil Corporation and their file, and Mr. Blinken and Mr. Warburg of E. M. Warburg -- Mr. Gruber and Mr. Blinken of E. M. Warburg Company.

Q And who are the directors that you identify?

A I would like to refresh my recollection, if I omit anyone but it would have been Mr. Little, Mr. Willey, myself. It would have been Mr. Warriner, Mr. Bates, and there may have been another director at that time. I'd like

to check the records.

MR. MAcCRATE: May I see the original exhibit? Is it a two-page exhibit?

MR. FARRELL: Yes.

A The previous directors meeting would refresh my memory as to who the directors were at that time.

Q Was a directors meeting held at or about that time in December 1962?

A I would like to refer to the records rather than trust my memory.

Q But this report, was it made in the course of a directors meeting or was this something that was sent by mail or in some other way distributed to the people whom you have identified?

A I recall it was in connection with a directors meeting. It may have been delivered to them in advance or it may have been on that date. I don't recall, but the records would show it.

Q But you do not, yourself, recall delivering it personally to the individuals you have named?

A I recall discussing it personally with the individuals named at the directors meeting. I don't recall the date of the directors meeting, and it may have been that date or it may have been near that date, but the records

would show.

Q Do you mean after the date of the report or before the date of the report?

A I would presume after the date of the report. But I don't know. The records would help me to recollect.

Q Would Mr. Blinken and Mr. Gruber normally attend your directors meeting?

A No, they would not have been at the directors meeting. Those were additional copies to the officers of the company who were not directors and to the financial people associated with the project.

MR. MacCRATE: I renew my objection, your Honor.

THE COURT: I will overruled the objection. However, I will receive it in evidence solely for the purpose of showing that he made a report and delivered or filed it to those persons whom the jury may find that he did give it to or discuss it with, and this report is not to be received as evidence of the truth of any of the facts contained therein, simply because something is contained in a report.

All right, received in evidence, number 80.

(Exhibit D-80 was received in evidence.)

MR. FARRELL: I offer Defendant's Exhibit 316,

now, your Honor.

THE COURT: Any objection?

MR. MacCRATE: Yes, I object to 315. I see no need for that in the record. I think we have already had testimony with respect to all relevant matters.

THE COURT: My understanding is that two paragraphs of this that may have been bearing on this case have been read to the jury already, have they not?

MR. FARRELL: Your Honor, they have not been read to the jury in toto. Mr. MacCrate quoted from them when he questioned Mr. Shippee.

THE COURT: All right. I will permit you to read into the record from this exhibit either of the two paragraphs to which prior reference had been made, to read the entire paragraph, but I will sustain the objection to the document. If you care to read either of the paragraphs, parts of which have been read to the witness during this trial, you may read the complete paragraph.

Do you want to read any part of it?

MR. FARRELL: Yes.

THE COURT: Members of the jury, these are provisions contained in minutes of a meeting of the board of directors of Prudential, which I understand to be Prudential Connecticut, on December 2, 1962. Go ahead.

MR. FARRELL: I will read the paragraph starting at the bottom of page 2, your Honor.

THE COURT: All right.

MR. FARRELL: "Mr. Shippee reported on a trip he had just made to Puerto Rico where he had been investigating a deal on which he had the backing of certain individuals who were highly placed politically, whereby the corporation would act as a vehicle to establish a petrochemical plant in Puerto Rico.

"Mr. Warriner stated that he could foresee serious pitfalls in such an undertaking and cautioned that no affirmative move should be made by Mr. Shippee without adequate discussion by the board well in advance and with all the facts in hand. Mr. Shippee noted that a special meeting of the board might be necessary if some of the problems in the deal were resolved, possibly with in the next two weeks."

And, your Honor, I am going to read Exhibit 80.

(Mr. Farrell read from Exhibit P-80 in evidence to the jury.)

MR. FARRELL: Your Honor, that's all I have.

THE COURT: All right, Mr. MacCrate, you may have recross examination.

RECROSS EXAMINATION

BY MR. MacCRATE:

Q Mr. Shippee, while you were in Puerto Rico, the end of November, 1962, did you select a site?

A No.

Q While you were in Puerto Rico at the end of November 1962, were you told that you could have an exclusive franchise for a project?

A Yes.

Q When you say that you were told that you could have an exclusive franchise, do you mean that the Commonwealth was obligating itself not to permit anyone else to build a plant to do the same thing?

A A plant to supply the chemical industry, yes. Mr. Young chose the plant site and I dealt on the franchise matter and the exclusivity was a requirement for financing the project and it was one of the elements agreed to subject to the review of our concept by A. D. Little Company.

Q You are saying it was agreed to. Now --

A I am sorry.

Q Who said what to whom that you interpreted as an agreement?

A I said that we must have an exclusivity in order to finance it and Mr. Diaz-Hernandez told me that he understood that was a requirement.

Q When did Mr. Diaz- Hernandez tell you that?

A At my first meeting in Puerto Rico, I would place as November 29 -- 28 or 29 -- 1962.

Q When you say there was an agreement, what you are referring to is Mr. Diaz-Hernandez' understanding of what you were asking for, is that right?

A Sine qua non is that we had to have it. The financial people told us that we had to have it so as to make the financing of the sale of shares a success. There could not be another one, there must be only one.

Q I understood you to say at first that the plant site had not been selected but then I thought you said Mr. Young selected a plant site.

A You asked if I selected the plant site and I said no. I thought you asked me another question but since you didn't I didn't want to leave you unadvised. It was Mr. Young who had this area and made the tour by airplane and he was the one that finally selected the plant site as far as we were concerned. The Puerto Ricans showed us several possible sites.

Q Which site did Mr. Young select at the end of November 1962?

A The present site.

Q The present site to which you refer, you will have to locate by town if you will.

A The town was built on the site and that is a large portion of the town.

THE COURT: He just wants you to name the town, Mr. Shippee?

A It is called the core plant site.

Q It is your testimony that Mr. Young at the end of November 1962 selected as a plant site the present location of the Phillips plant in Puerto Rico?

A It is.

Q Do you know on what side of the island the Phillips plant is is located?

A Near Mayaguez.

Q On the north, south, east or west?

A It would be on the northwest.

Q The Phillips plant site is on the northwest side of Puerto Rico?

A I am trying to orient myself.

MR. MARKS: This is a matter of record as to where the plant is located.

THE COURT: But this is permissible recross examination.

Q If you show me the map I will put my finger on it on the map. There is one in the book.

MR. MacCRATE: May I have 215?

Q Mr. Shippee, I show you Plaintiff's Exhibit 215 and refer you to this map of Puerto Rico and I would like

to request that this page be marked for identification.

(Plaintiff's Exhibit 215-A was marked for identification.)

Q I show you the map, Plaintiff's Exhibit 215-A for identification and now you are pointing to the left side of the map.

A Coming from San Juan then to the northwest coast and come down here to approximately Mayaguez.

THE COURT: Approximately where?

THE WITNESS: M-a-y-a-g-u-e-z.

Q That was the site selected by Mr. Young in November of 1962?

A More precisely they had selected three alternate sites and he said that that was the best of the sites he saw. That turned out to be the site that was developed and is used.

Q You are quite sure of that, Mr. Shippee?

THE COURT: Of what?

Q You are sure that that was the site that was developed?

MR. MARKS: I object to that question.

THE COURT: No speeches please. The record should show the designation to someone reading the record so we may understand what that is, have the witness mark

it in red pen or pencil.

MR. MARKS: The witness --

THE COURT: No speeches, it is recross examination.

Q Place a circle around the area?

THE COURT: The area which Mr. Young selected?

THE WITNESS: Yes.

Q You have at this time placed your initials by that circle?

A I did.

Q I believe you testified that you went to Puerto Rico in 1965?

A I did.

Q Did you go again in 1966?

A I believe I did.

Q Did you make a tour of the island on either or both of those occasions?

A Yes.

Q To what part of the island did you go?

A I came to San Juan and I drove across Ponce. I drove along --

Q Ponce is on the south side of the island?

A The very south side, the Southwest Coast and up the West Coast and around the Northwest Coast back to

San Juan.

Q You went in the course of that by the Mayaguez area?

A I went by the core plant, yes.

Q You went by the core plant in what year?

A I guess that would have been 1968, 1967. I can't recall.

Q Does it refresh your recollection that the import quota was granted in December of 1965? Can you by reference to that event place when you made this trip to Puerto Rico?

A 1967 and 1968; I am not sure.

Q On that trip in 1967 and 1968 did you follow this route of San Juan to Ponce and then west or east?

A I believe as I described west and back to San Juan.

Q Through the Mayaguez area?

A Yes, that is my recollection.

Q Mr. Shippee, have you ever gone east from Ponce along the South Coast of Puerto Rico?

A Yes, I have also gone from San Juan around the east.

Q When did you make that trip, Mr. Shippee?

A I think twice. I think the first time I was

there I went to the rain forest which I believe is in this direct.

Q You point to the east side?

A Northeast side of the island, yes.

Q That was when you referred to the first time, was that in November of 1962?

A Yes, I believe so.

Q Then you were over on the east side of Puerto Rico on another occasion?

A Yes.

Q When was that?

A I'm not sure. If it is important to you I will try to determine.

Q Can you relate it to an event?

A That was a sightseeing --

MR. FARRELL: Your Honor, I think we covered this point and it is getting into irrelevancies.

THE COURT: I don't want his sightseeing trips but if he went to the plant he can be cross-examined about it.

MR. FARRELL: Of course.

THE COURT: Let us go forward.

Q On what trip, Mr. Shippee, did you go by the core plant to which you referred?

A I believe it was in the 1967 trip.

Q It is your testimony that you went by the core plant in the Mayaguez area of Puerto Rico?

A That is my recollection.

Q Isn't it a fact that the core plant is located in the Guayama area down on the south side east to Ponce across the island from Mayaguez?

A Let me ask you is the Commonwealth at Mayaguez?

Q Mr. Shippee, you are the one who went there.

THE COURT: Don't argue, gentlemen, just answer the question.

Q Have you seen the Commonwealth plant?

A Yes, I have. I visited all three plants.

Q Have you actually been around the core plant?

A No. Just in an automobile to drive in and look at it and drive out.

Q Isn't it a fact that it is down onthe south side of the island east of the Commonwealth plant and the Ponce area?

A If it is I am disoriented on the map.

(Continued on next page.)

Q But you were sure that Mr. Young's site was at Mayaguez, is that right?

A Mr. Young will be a witness --

THE COURT: No, no, just answer the question.

A I was sure that it was in this corner of the island where the site was chosen. I wasn't with him, I did not choose the site. He made the trip and selected the site.

Q And you were similarly sure that the core plant was located in the Mayaguez area, were you not?

A It was my impression that it was there, although I originally said Guayaquil, when you asked me.

Q I don't believe you have identified the southern coast as the location of the core plant until this minute, Mr. Shippee. Are you suggesting now that the core plant is in fact on the south side?

A You asked me who made the plant site and I said I did not. I then volunteered that Mr. Young did, and I was not on his trip. I later visited by car all three plants and I have tried to describe to you approximately when and under what circumstances. But I was not part of the port site selection.

Q Referring again to Plaintiff's Exhibit 80,

there is a reference to Mr. Thomas Young designated operating head of the project.

Who designated Mr. Young as operating head of the project?

A I did.

Q And there is a further reference to Mr. Nathan Shippee designated chairman of the project. Who designated Mr. Shippee as chairman of the project?

A I did.

Q Mr. Shippee, on the occasion of your visit in early November, 1962 to Puerto Rico, for how long did your conference with Mr. Durand last?

A It was the end of a long meeting with Mr. Diaz-Hernandez and it lasted perhaps twenty minutes.

Q In other words, most of your time spent with any representative of EDA was with Mr. Diaz-Hernandez and not with Mr. Durand?

A Correct.

Q And just towards the conclusion you were introduced to Mr. Durand?

A Yes.

Q Would you tell us as best you can recall what you said to Mr. Durand and what he said to you on that occasion?

MR. FARRELL: Your HOnor, this is going beyond the scope of redirect.

THE COURT: I will permit it. Objection overruled.

A They were general courtesies. I expressed admiration for the success of Bootstrap and he thanked us for our interest and for coming there. He hoped that the project that Mr. Diaz-Hernandez had been really the father of , would be fruitful because so much effort had already been spent on it and I said that we would make our best effort.

There were some more courtesies. He said he hoped that I would visit the island and see the rain forest, and be comfortable, and if there was anything he could do for us, and I thanked him and we went back to the operations room from his office.

Q Mr. Shippee, referring to page 2 of the memorandum, Plaintiff's Exhibit 80, there is the statement "There is 50,000,000 available for land purchase and 60,000,000 avaialbe for area re-development for this purpose."

From whom did you get the information as to the availability of funds?

A I believe from Mr. Coan.

Q And did Mr. Coan indicate that the funds

available were available for all developmental purposes of EDA at that time or is that an availability for an individual project?

A It was my understanding for this project, to develop the area.

Q When you speak of develop the area, was this money that had been allocated for the development of land in the Mayaguez area?

A I don't know the area. It would be the area selected. It was to include homes for workers, sewers, roads, to make the area available but not to build the buildings for the plant itself.

Q Did anyone at EDA tell you that $50,000,000 as of November, 1962 is being made available for the purchase of land?

A I believe that was part of the information made available to us by Mr. Coan. I don't recall.

Q Did anyone from EDA tell you that?

A Well, Mr. Coan was EDA.

Q Is it your testimony that Mr. Jack Coan was an employee of EDA?

A Yes, I believe he told us he was employed by EDA as a consultant on this project and we always dealt wtih him as if he were EDA.

Q When you say he was employed as a consultant, was his management firm, Omega Management, retained from time to time to do particular studies; is that your testimony?

A That is my understanding.

THE COURT: Retained by whom?

THE WITNESS: EDA.

Q And do you have knowledge, you, yourself, of any particular retainers that Mr. Coan had from EDA?

A I accepted his representation. I never made an independent investigation of whether he had it or not, but every indication I saw led me to believe that he had it.

Q When did he receive this retainer, if you know?

A PRior to our joining the project. I don't know when.

Q In what year, Mr. Shippee, do you know?

A I met him first in October of 1962.

Q But it was just some time before that you think he was retained by the Commonwealth Government?

A He told us that he was retained by EDA as a consultant on the project and we worked with him on that premise.

Q Well, what did he identify as the project for

which he was retained?

A Development of a core refinery and satellite chemical plants for supplying indigenous or the lack of indigenous raw materials to employee people who worked in Puerto Rico.

Q Did this date back to his initial work with the Commonwealth authorities in this respect?

MR. FARRELL: Your Honor, I think this is way beyond.

THE COURT: Sustained as to form on the last question.

Q Did he tell you when he had been retained for this purpose?

A No.

Q But it was some time prior to your meeting him on October 10, 1962?

MR. FARRELL: Your Honor, that is inconsistent with his testimony.

THE COURT: Not necessarily. If he knows, he can answer.

A When I first met Mr. Coan --

Q On October 10, 1962.

A Is that on October 10th or, yes, approximately October 10th, he advised us that Omega Management was

working for EDA as a consultant on the project, that Mr. Chapman and Mr. Brown had been the promotors and Mr. Brown had now left to go as the president of Murphy Oil Company, and that they needed an oil company to go on with the project with Mr. Chapman.

So it was at that time that I understood, and I have always understood, that Omega Management was a consulting firm to EDA .

Q Mr. Shippee, the first line on the top of page 2 of Plaintiff's Exhibit 80 reads: "Policy statements were obtained on the following points."

From whom were the policy statements obtained.

A From Mr. Diaz-Hernandez..

Q And what was Mr. Diaz-Hernandez's policy statement with respect to "There is $50,000 available for land purchase and $60,000,000 available for area devleopment for this purpose"?

MR. FARRELL: Your Honor, he's testified on that and said it was Mr. Coan.

MR. MacCRATE: That is precisely my point.

MR. FARRELL: That is not precisely your point.

THE COURT: Gentlemen, wait a moment now. The only one who can yell in here is myself and I try not to

do it and I ask you not to raise your voices with each other or talk at once. If it's already been testified to, there is no sense to repeat it Mr. MacCrate.

MR. MacCRATE: My question, your Honor, was directed to Mr. Diaz-Hernandez, because the witness' testimony --

THE COURT: Don't sum up. I will allow you to reframe the question.

Q Mr. Shippee, with respect to the policy statements that were obtained, those statements, to the extent they were obtained, were from Mr. Diaz-Hernandez, is that correct?

A No. Mr. Coan and Mr. Diaz-Hernandez and I were in the same room discussing the same matters. Mr . Coan would supply the statistics, the mathematics, the numbers, Mr. Diaz-Hernandez would make the policy statement.

Now, if a policy statement included a number I might have gotten a number from Mr. Coan, but Mr. Diaz-Hernandez made the policies. So the word policy statements came from Mr. Hernandez, but if it was a mathematical fact, it was Omega who had all of the studies and mathematics.

Q And the question of whether $50,000,000 was available for land purchase would be information that Omega had developed and would not be information that Mr.

Diaz-Hernandez would have, is that your testimony?

A Mr. Diaz-Hernandez would say, "We will make the money available for the plant development."

And I would say, "How much would that be?"

And Jack Coan would refer to some things and say, "There is so much available," and that number would be inserted. It was that type of conversation.

Q And similarly, with resepct to the $60,000,000 figure available for area development?

A Mr. Hernandez would say, "And we will supply the area development."

And I would say, "Well, how much would that be?" And Mr. Coan would find a number.

I don't recall that we had those numbers at that conversation. He developed the numbers later and we filled them in.

Q So that this report that you are distributing to various people at the end of December 1962 was made up of information, some of it obtained in Puerto Rico at the end of November, and other information that was later added.

A I'm sure it was up to date with all the information we had up until the time it was written, yes.

Q But when you refer to policy statements obtained, you're talking about policy as explained by Mr.

Diaz-Hernandez, is that correct?

A Correct.

Q And the next item refer to "PROPCO would retain independent counsel to advise the Commonwealth regarding the technical feasibility of the proposed project."

Now, PROPCO was the proposed company, was it not?

A Yes.

Q And there was a policy statement by Mr. Diaz-Hernandez in that regard?

A Yes.

Q What did he say?

A We had described to him the modification of the core's satellite concept which included a quasi-public utility, and we were all excited about it, but they wanted an independent confirmation or an outside counsel -- that's where A.D. Little came in -- but some outside counsel to tell them independently; after we described it to them, they should report back to EDA of their opinion.

So that's where that came in, that we were required to get an independent counsel to advise the Commonwealth regarding the technical feasibility of the proposed project and we later did that with A.D. Little.

Q Did this occur at your meeting with Mr.

Diaz-Hernandez in Puerto Rico at the end of November of 1962 or did it occur at a later time?

A It came up at that meeting in November, and we saw A. D. Little -- it was followed up by the December meeting of Mr. Hernandez in New York as to the choosing of A. D. Little, and then we saw A. D. Little in January, I believe.

Q But the so-called public utility concept was something that you discussed with Mr. Diaz-Hernandez in Puerto Rico at the end of November 1962?

A Yes.

Q And then with respect to the policy statement on the next item, "THe Commonwealth would sponsor the project after independent technical endorsement and would grant PROPCO an exlusivity for the chemical industry in their charter of incorporation."

Did Mr. Diaz-Hernandez make a statement to you with respect to that exclusivity?

A Yes.

Q And what did he say and at what meeting?

A At the meeting, my first meeting in November, in Puerto Rico, in 1962, I outlined the financial plan and what it would require. One of the conditions that was essential was that if we undertook this project with the

quasi-public utility nature of the core, there couldn't be another one because they were going to have to make undertaking which would show up in the stock offering, and it had to have a balance. If they were going to take the burden of supplying the capital for the industry, they should not have any competition from another one, once we got started, and I stated that it had to be understood that if the project was going forward, and was going to be able to be financed, it had to have that exclusivity.

Q And what did Mr. Diaz-Hernandez say with respect to exclusivity?

A He understood that it was our requirement.

Q He understood that you were making that request?

A Our requirement. We would not go further if that was not part of the charter of the company.

Q Well, did he say that it would be part of the charter of the company?

A It was my understanding that he understood that that was a requirement.

Q Did he say that it would be approved as part of the charter of a company incorporated in Puerto Rico?

A At that meeting in November he took it under consideration. I don't recall that he actually gave me that

assurance at that meeting. We later got the assurance.

THE COURT: From Mr. Diaz-Hernandez?

THE WITNESS: From Mr. Diaz-Hernandez.

Q When did you get that assurance that there would be an exclusivity for the chemical industry in the charter of incorporation?

A If it was not during the second day of that meeting, and I can't be sure, it would have been in the next meeting with Mr. Diaz-Hernandez, which I believe is mid December in New York. But it was in the time period that we are preparing the application.

Q So you were assured either in Puerto Rico, at the end of November, or in New York, in the middle of December, by Mr. Diaz-Hernandez, that there would be exclusivity for the chemical industry in the charter of PROPCO?

A Yes.

Q What was Mr. Diaz-Hernandez's statement with respect to the fourth item, "The Commonwealth would grant PROPCO tax and other protection to enhance the profitability of the project"?

A There was a regular tax holiday in the island under Operation Bootstrap. And we discussed other modifications from the standpoint of what would the starting date be.

Since we were now discussing a core plant that would only later attract satellite plants, we wanted the tax holiday to have the added years up till the time we had a full group of satellite plants, because it might take us as many as five or even ten years to complete the fulfilment of the satellite plants and we didn't want the period to start and expire before some of these plants themselves were coming onstream.

Q And you discussed this with Mr. Diaz-Hernandez in Puerto Rico at the end of November 1962?

A With Mr.Coan and Mr. Diaz-Hernandez, yes.

Q And you also discussed with them the general policy of Operation Bootstrap to provide tax exemption as a way of inviting industry into Puerto Rico, did you not?

A I'm sure we did, yes.

Q Now, the memorandum goes on to state:

"Based upon this investigation and official support, an app tion for import quota for oil was prepared for submission to the Department of Interior."

Is it your testimony that an import quota application was prepared for submission to the Department of the Interior prior to December 28, 1962?

A Yes.

Q When?

A I believe that the book I was, one of the books I had yesterday was marked 12/62. There were others. We were working on the application from November through December. We hoped to have it filed in February.

Q And do you call this brochure an application to the Oil Import -- I withdraw that.

Do you call this brochure --

THE COURT: Would you state the number of the book?

Q P-215, an application to the Oil Import -- withdrawn -- to the Interior Department?

A It was the -- the answer is yes.

Q And is the submission directed to any particular agency that you can identify on the face of the document?

A May I point out that Mr. Oscar Chapman --

Q Is it directed to any --

THE COURT: It is in evidence and it speaks for itself, Mr. MacCrate.

A It says "Request for oil import allocation."

Q But there is no direction to any agency of government on that document is there?

MR. FARRELL: Your Honor, I object to that.

THE COURT: Sustained.

Q Had Mr. Oscar Chapman prepared any formal application in December of 1962 on behalf of a company Propco and submitted it to the Interior Department?

A There are two questions. Can you give me one at a time?

Q Will you please answer my question?

THE COURT: I will sustain the witness' objection, it is a compound question.

Q In December of 1962 did Mr. Oscar Chapman prepare any application to the Interior Department for an oil import quota?

A I believe so, yes.

Q Have you ever seen such a document?

A No.

Q You believe it was prepared in the name of what company?

A I believe --

MR. FARRELL: I object to that.

THE COURT: Well, I think the question can be reframed. As I understand it -- can we cut this short? It says in Exhibit 80 that based upon this investigation and official report an application for an import quota for oil was prepared for submission to the Department of the Interior. That is a reasonable area for cross-

examination.

He can be asked by whom and when and where and what the basis for his statement to that effect in Exhibit 80 is. But let's not go far afield.

Q By whom was it prepared, Mr. Shippee?

A Mr. Chapman and his law firm, his office.

Q Prepared an application in December 1962?

A By December 1962. It was under preparation even before we entered the proje ct and as we worked, he worked. As the financial people were working, they were getting the financing plant together, we got this project put together. This and other things all made up the application.

The application went on a particular form supplied by the Oil Board and those forms were in the office of Mr. Chapman and they are put together with these exhibits and submitted.

Q You are referring therefore to an application, in this memorandum of December 28, 1962, to an application that had been prepared by Mr. Chapman prior to October 1962?

MR. FARRELL: Objection, your Honor.

THE COURT: Overruled, it is cross-examination. He can tell us what he is referring to.

A I was referring to our working with Mr. Chapman, advising him of our schedules as of where we were and he was advising us of his readiness to receive our import request and file it with the proper bureau.

We had to modify the plan. The original plan was a core-satellite. The Bruce Brown-Oscar Chapman was satellite followed by core. We changed the plan to core-satellite and submitted it as a quasi-public utility.

This change was then wrote up in our project book but the filing of the application is a filing on a form and that form would never change no matter what this project outline change might be.

Q You refer to your project book and you point to Exhibit 215. Are not the last many pages and schedules that are contained in there precisely what was contained in what Mr. Chapman and Mr. Coan and Mr. Brown had assembled back in the spring of 1962?

A The UOP was the same. The process was the same. The port selection site information was the same. The studies that the Omega management on behalf of EDA, as far as I know, as far as the statistics of the industry in Puerto Rico and so forth, were public documents and they were the same. This book that I just touched --

Q Plaintiff's Exhibit 215.

A I would like to have the other one marked December 1962 because that really was the one we were working from at the time.

Q You would like to see 214?

A Merely because that was the December 1962 book.

(Handed to witness.)

MR. MARKS: Your Honor, I think we went into all the brochures the first cross-examination and we didn't go into it on redirect.

THE COURT: The introduction of 80 was on the redirect examination.

Let's go back to this sentence. I don't like to intrude on counsel's cross-examination but I suggest you clear it up and go on to something else.

MR. MacCRATE: The witness asked for 214.

THE COURT: Frame another question.

Q With respect to Plaintiff's Exhibit 214, in what form was that document on or about December 28, 1962, the date of your memorandum?

A The table of contents shows as I look at it my name and the date 12/62.

It is my best recollection from looking at it that we had this prepared at the time that I reported to

the board and that I listed here that this application which has a title "Request for Oil Import Allocation" was in substance ready to be turned over to counsel in Washington for filing.

We continued to work on it. We worked on it up through May but from month to month we were prepared to file it. As new things came up we waited for the marketing or the report or other things, we would go another month.

Q We have already reviewed the seven items that were changed in that period.

MR. MARKS: Objection, yes, we have.

THE COURT: Sustained.

Let us go back to 80 and go on to something else.

Q With respect to Exhibit 80 and the reference to the application for an import quota, as of December 28, 1962, had Mr. Chapman or his law firm as yet seen this volume, Plaintiff's Exhibit 214?

A I can't be sure.

Q You have no recollection of having shown it to them?

A I have a recollection of showing it to them, certainly. I am trying to place the date and those were

very busy days and a lot was going on.

I can't say for sure if at the end of December this book had gone to Washington. Sections of it would have been but I don't think the book had been sent. I don't believe any books were sent to Washington until May.

Q When you say sections of it would have been, the fact is that sections of it are precisely what was in Washington nine months before?

MR. FARRELL: I object.

THE COURT: I will allow that but we ought to move along.

A Not to my knowledge.

THE COURT: Is this statement true in Exhibit 80 as of December 28, 1962:

"Application for import quota of oil was prepared for submission to Department of Interior"?

THE WITNESS: Yes.

THE COURT: What is the basis for your statement that it is true?

THE WITNESS: This book in front of me, 12/62 and my report made at the time of the directors.

THE COURT: All right.

Q What is the site selected in this book, Mr.

Shippee, Plaintiff's Exhibit 214?

MR. FARRELL: I object to that. The book is in evidence and Mr. MacCrate --

THE COURT: I will permit it. We have to move along. He is talking about 214 now.

MR. FARRELL: I understand that but it is in evidence.

THE COURT: Yes.

A The site that I indicated to you as near Mayaguez. It has a pencil mark and an arrow.

Q Mr. Shippee, I show you Plaintiff's Exhibit 201. Is this the retained copy of the letter which you wrote on October 4, 1966?

A I have no way of determining from looking at it.

Q Is it a copy that was sent by the sender or a copy that you signed and sent to Mr. Willey?

A Could you tell me if it came from files?

THE COURT: Is there any dispute about the genuineness of this exhibit?

MR. MacCRATE: Not as to the genuineness but there is --

THE COURT: Frame another question.

Q It does not bear your signature, does it?

A No, it does not.

Q It would appear to be a file copy rather than the original of the letter?

A It is an unsigned copy on an original head.

Q The letterhead on which it appears is Prudential Fund, Inc., is it not?

A Yes, sir.

Q Prudential New York had already been formed as of October 1966, had it not?

A Yes, it was in 1966 and I believe subject to correction by records that it was prior to October 4. If the record shows otherwise it would refresh my recollection.

MR. MARKS: That is a stipulated matter, your Honor.

THE COURT: I understand that.

Q Prudential Fund, Inc. was a separate corporation from Prudential New York? What were their relationships?

A This was the parent company and Prudential Oil Corporation of New York was a wholly-owned subsidiary.

Q You refer to the directors meeting yesterday which voted to proceed with the suit. Do you refer to the directors of Prudential Fund, Inc.?

A The directors of Prudential Oil Corporation of New York, Inc.

Q It is your testimony that the decision to proceed with the suit was made by the directors of Prudential Oil Corporation, not by the Prudential Fund directors?

MR. FARRELL: I object to the line. All of this has been stipulated and we have had it.

THE COURT: I will take an offer of proof in view of the fact that this is recross examination if counsel wants to approach the side bar.

(At the side bar.)

MR. MacCRATE: It has been stipulated that the directors meeting at which this action was taken with respect to the institution of the suit was that of the parent corporation and not the board of Prudential New York.

The witnes has testified that there was action taken by the directors of Prudential New York and I submit that I should be allowed to inquire as to that matter.

THE COURT: Are they the same people?

MR. MacCRATE: I don't believe so.

THE COURT: Is there any question that the maintenance of this action has been authorized by the directors of the plaintiff?

MR. MacCRATE: I haven't seen any proof of that.

THE COURT: The suit was maintained for nine long

years in this court and somebody must have authorized its maintenance. The mere fact that he is here is some evidence of that fact.

The underlying data has been stipulated and I don't know what you plan to show to this witness at this time. Many a small corporation brings lawsuits without a resolution in its board of directors minutes.

Who owns this plaintiff? Does the record show here?

MR. FARRELL: Yes.

THE COURT: Now, today.

MR. FARRELL: The parent company, Prudential.

MR. MacCRATE: The witness said Prudential group.

THE COURT: That owns 100 per cent of the stock of plaintiff?

MR. FARRELL: Yes.

THE COURT: Was that true in 1966?

MR. FARRELL: Yes.

MR. MacCRATE: Well, we have been told of substantial corporate changes.

MR. FARRELL: Not since 1966. It has remained a wholly-owned subsidiary of the parent.

THE COURT: If the directors of the parent

resolve a resolution that a wholly-owned subsidiary ought to bring this litigation I think that is adequate for my purposes.

(In open court.)

MR. MacCRATE: Your Honor, I will withdraw my prior question and inquire of the witness.

Q Who in in October 1966 were the shareholders of Prudential Fund, Inc.? Was it a publicly held corporation?

A I must refer to the records.

THE COURT: Can it be stipulated or is there some document?

MR. FARRELL: We will stipulate.

THE COURT: What is the form of the stipulation?

MR. FARRELL: Your Honor, I would have to consult the records but we will do that.

THE COURT: Let us take it up later. If it can't be stipulated Mr. Shippee may be recalled to the stand and asked about it.

Who is the Prudential referred to in this letter, Exhibit 201? Which Prudential?

THE WITNESS: Prudential New York. We had directors meetings of wholly-owned subsidiaries and of the parent company on the same day.

THE COURT: Don't volunteer information, Mr. Shippee.

Q Mr. Shippee, in addition to the bringing of the suit there is reference to a division of interest with Prudential. To which Prudential is reference made with respect to the dividing of interest?

MR. FARRELL: I object to that, your Honor.

THE COURT: The document is in evidence, is it not?

MR. FARRELL: Yes, it is, but the question --

THE COURT: What is the question?

MR. MacCRATE: I will reframe my question.

(Continued on next page.)

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Q The first paragraph states "Reference interest in the Phillips suit. Please give us your thoughts on the following: Of the net interest (a) fifty percent Prudential."

Which Prudential is referred to as to receive fifty percent?

MR. FARRELL: Your Honor, that question has been asked and answered.

THE COURT: Perhpas it wasn't as clearly asked. I asked it myself. BUt I am not sure I framed it as clearly as I might have, so I will permit him to answer.

A The Prudential who owned the interest is what it referred to. It is my understanding now that the Prudential who has the suit is the Prudential Oil Corporation of New York,and that must have been the Prudential I was referring to ten years ago, when I wrote that letter. But I obviously meant to ask Mr. Willey how did he feel along a certain mathematical equation. I wasn't focusing on the questions that you're raising for me now, so I can't say that what was in my mind at that time was not the question of which corporation, but it was the one that owned the interest, obviously.

Q Well, you say you didn't know which one owned it, is that your testimony?

A No.

MR. FARRELL: Your Honor, I think we have had enough of this.

THE COURT: Perhaps now it isn't clear. You see, I had understood him to testify that the use of Prudential on Exhibit 201 at all times referred to Prudential of New York. Now the last answer may modify that.

MR. FARRELL: I think all he said --

THE COURT: Counsel can pursue it. Overruled. Frame another question, Mr. MacCrate.

Q The next paragraph reads:

"It is understood that my share will also go to Prudential."

To which Prudential ccrporation were you suggesting that your share would go?

A Prudential of New York.

Q And it is your testimony that the directors meeting "that was held yesterday ," to which reference is made, is the directors meeting of Prudential New York?

A Yes.

THE COURT: At this time I will take a brief recess.

Members of the jury may withdraw to the jury room.

(Recess.)

THE COURT: You may resume.

MR. MacCRATE: Your Honor, I believe we are prepared for a stipulation on the record.

THE COURT: Fine.

MR. FARRELL: Your Honor, with respect to the ownership of Prudential New York, as of October 4, 1966, the date of the letter, Exhibit 201, to which Mr. MacCrate was referring, Prudential New York was a wholly owned subsidiary of Prudential Equities. Prudential Funds was also a subsidiary of Prudential Equities, but a minority interest was held by the public.

Subsequent thereto, Prudential Equities, the parent, was merged into Prudential Funds, and the name of Prudential Funds was changed to Prudential Group. The result is today that Prudential New York is a wholly owned subsidiary of Prudential Group, which is a publicly held corporation.

THE COURT: Thank you. So stipulated.

Q Mr. Shippee, in the light of the stipulation, I show you Plaintiff's Exhibit 201, on the letterhead of Prudential Funds, Inc.

In October, 1966, Prudential Funds, Inc. was not the parent of Prudential New York, was it?

A I've just had that clarified by the stipulation.

Q And in fact, Prudential Funds, Inc., was a subsidiary corporation of Prudential Equities, just as Prudential New York?

MR. FARRELL: Your Honor, we just had that.

THE COURT: Yes, I think we did just have that. The significance of it is lost on me, you see.

How many letterheads did you have in your secretary's desk in those days?

THE WITNESS: Many.

THE COURT: Many? All right.

Q Well, did you write this letter to Mr. Willey on behalf of Prudential Funds, Inc.?

MR. FARRELL: Your Honor --

THE COURT: That he can answer.

A That letter was written to Mr. Willey on behalf of Prudential Oil Corporation of New York.

THE COURT: At that time Mr. Willey was no longer connected with the Prudential group of companies?

THE WITNESS: Indirectly he was the head of an oil company that did business with us, but he was not an employee or director or officer.

THE COURT: All right.

Q The reference in the letter to the Phillips suit, was that a reference to a suit against Phillips alone

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or against Phillips and some other defendant?

MR. FARRELL: Your Honor, I object to that.

THE COURT: He's being asked for the operation of his mind. I thought they were talking about this action. But he can answer it.

A Please repeat the question.

(Question read.)

A I don't recall. I believe it is the present action.

Q This is in October of 1966, and the present action was instituted in September of 1967. Does that in any way refresh your recollection as to the nature of the suit referred to in October of 1966?

A No, that doesn't change my answer.

(Exhibit D-323 marked for identification.)

Q Mr. Shippee, I show you Defendants Exhibit 323 for identification, and ask you if that refreshes your recollection as to against whom the suit was to be brought referred to in Plaintiff's Exhibit 20?

MR. FARRELL: Your HOnor, I object.

THE COURT: Overruled. He may answer the question yes or no; either his recollection is refreshed or it's not.

THE WITNESS: No.

Q Did you, during 1966, contemplate a possible suit against Mr. Oscar Chapman?

MR. FARRELL: Your Honor, objection.

THE COURT: I will sustain that at this time in the absence of a showing of relevancy.

Q Mr. Shippee, have you, prior to today, seen Defendant's Exhibit 323 for identification?

MR. FARRELL: Objection, your Honor.

THE COURT: I will let him answer yes or no, whether he's ever seen it before today.

A Yes.

THE COURT: Or a copy of it.

If there is anything more on this I will have to take it at the side bar in the nature of an offer of proof.

MR. MacCRATE: I would tender the document in evidence, your Honor.

THE COURT: Hand it to the clerk.

MR. FARRELL: I objec t.

THE COURT: Let me see it.

(At the side bar.)

THE COURT: What is the purpose of the offer?

MR. MacCRATE: It is to show, your Honor, the different theories and defendants against whom and upon

which Mr. Shippee and those associated with him were prepared to proceed over the years 1965, '66, '67.

THE COURT: Well, you see, if he did not author this document or approve it or sign it or do something which makes it his or the plaintiff's admission against it, I am not inclined to accept it on the basis of the present record. The fact that he did not ultimately sue Chapman as a co-defendant I don't think is relevant at the present state of the record.

MR. MacCRATE: Well, if I were allowed to ask him about the document, then I believe I could establish that foundation. He does say that he has seen the document before.

THE COURT: You see, if there is a particular factual statement in here it would be permissible to ask him whether he had ever advised that such and such a fact existed, but otherwise I don't see that this document is relevant or admissible at this time. If it can be found that he stated a particular --

MR. MacCRATE: Your Honor, this is a copy of a document given to Phillips by Mr. Shippee or Mr. Willey in May of 1966.

THE COURT: As a part of efforts to settle the claims, as I understand it.

MR. MacCRATE: It is a draft complaint which names Oscar Chapman as a defendant.

THE COURT: I understand that. And it contains in it some statements, for example, paragraph 30, which comes to light here, I suppose is arguably inconsistent with a statement in paragraph 80, but I think if it were shown to them by him, they were acting in an effort to settle the lawsuit or settle the potential controversy , I don't think -- it might even be privileged under our new rules of evidence.

MR. MacCRATE: There is reference --

THE COURT: What facts specifically is there in this that is of significance?

MR. MacCRATE: Well, there is reference to a suit being authorized in October of 1966.

THE COURT: Where do you find that?

MR. MacCRATE: In the document about which I have just been inquiring, and I believe I am entitled to inquire whether the suit that was authorized is the same suit that was apparently threatened in May of '66.

MR. FARRELL: But he's asked that, your Honor. The witness said it didn't refresh his recollection.

THE COURT: Well, what is the question you propose to ask again?

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MR. MacCRATE: Is this a draft of the complaint, that it was proposed to be filed pursuant to the authorization of the board of directors in October, 1966.

THE COURT: As the Court understands it, this is a document which this witness and others carried with them to Phillips, presented it to Phillips, in a conference at which they in effect said to the people representing Phillips that we have a claim and here we have the draft of the complaint we propose to file against you, and we invite you to adjust and settle the claim.

Is that a fair statement of what took place?

MR. MacCRATE: I think that is certainly an appropriate description.

THE COURT: You think it is not appropriate?

MR. MacCRATE: No, I think it is appropriate, your Honor.

MR. FARRELL: You could have said yes.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: I will sustain the objection to the line of inquiry. I regard the document to the extent that it is an admission against interest by this plaintiff, or represents any statement of fact by or in behalf of this

plaintiff as representing part of a settlement discussion which the Court would consider privileged under the circumstances, to encourage people to settle their lawsuits.

There is a relevant rule, but I haven't been able to put my finger on it while we've been here. I am relying on the New Federal Rules of Evidence in that regard.

(In open court.)

MR. MacCRATE: That concludes my recross examination.

MR. FARRELL: I have nothing.

THE COURT: Mr. Shippee, you may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. FARRELL: Mr. Edward Willey.

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E D W A R D J. W I L L E Y , called as a witness by the plaintiff, being first duly sworn, testified as follows:

THE COURT: It is Rule 408 that I intended to refer to in my discussion with counsel.

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Willey, turning your attention to October 1962, what was your position at that time?

A I was president of the Prudential Oil Corporation, a Connecticut corporation.

Q At that time were you advised of a proposed petrochemical project in Puerto Rico?

A Yes, I was.

Q Who advised you?

A Mr. Shippee.

Q Subsequent to that what did Mr. Shippee tell you --

MR. MacCRATE: Could we fix the time and place?

THE COURT: Yes, fix the time and place, the first discussion with Mr. Shippee.

Q Tell me exactly as you can the time and place?

A Well, I don't have a good memory for dates. I can only tell you that it would be immediately after Mr. Shippee had talked with Mr. Coan because he and I shared the same office and we talked every day. So I cannot place it with a date. This is in October.

Q At that time, Mr. Willey, what was your background prior to being president of Prudential?

A I was a chemist and a lawyer and I had practiced for many years, patent law, and had done a lot of chemical engineering including some for Gulf Oil Corporation.

Q Had you been employed by Gulf?

A Yes, I was.

Q After you had been employed by Gulf waht did you do?

A I had several other employments. One of them was with Hercules Powder Company. One of them for General

Aniline & Film Corporation.

Q In what capacity were you employed by the corporations?

A Patent counsel for those corporations.

Q Any other employment prior to being president of Prudential?

A Yes. For quite a few years, about ten years before I became president, I was patent counsel for the Flintkote Company, a building material company in New York City.

Q Was there any other employment that you had prior to becoming president of Prudential?

A Yes. I don't know how far back you want to go. I started in a law firm in Washington, D.C. and another time I worked for a law firm in Philadelphia, all patent law firms.

THE COURT: How old are you, sir?

THE WITNESS: 62.

Q Now, tell us to the best of your recollection what it was that Mr. Shippee told you on October 1962?

A Well, he told me that the company had an opportunity to get involved with a refinery and chemical plant in Puerto Rico.

Q Did he tell you anything else?

A He told me we would probably be involved with a financial house called Warburg and I almost immediately went to a meeting at that place so I got some first-hand information on that.

Q Do you mean shortly after Mr. Shippee told you, you attended a meeting at Warburg?

A Yes.

Q Can you tell us who was present at the meeting at Warburg?

A As I recall virtually the whole board of directors of Prudential if not all of them. I believe all of them.

Q Can you name them as you can?

A Well, there was Jack Little, I believe Mr. -- I am sorry, I would have to be reminded.

Q Can you tell me who else other than the directors of Prudential were at the meeting?

A The directors of Prudential and two representatives from Warburg.

Q Who were they?

A I would have to be reminded -- Blinken and --

Q Mr. Gruber?

A Gruber.

Q Anyone else present at that meeting -- Mr. Coan?

A Mr. Coan.

Q Was he present?

A Yes, I believe he was.

Q How did he describe himself at that meeting?

A As I recall he said he was a consultant who had been working with the people in Puerto Rico for quite a long while trying to -- a ccuple of years at least -- trying to get a plant going in Puerto Rico and failed to do so.

Q Was Mr. Young present at that meeting?

A I don't remember that. I think I would doubt it but I don't remember for sure.

Q At that time, Mr. Willey, did you know the price of imported oil?

MR. MacCRATE: Objection, your Honor.

THE COURT: Well, he can answer yes or no.

A The answer is yes, I did.

Q What was the price of imported oil at that time?

A Basically --

MR. MacCRATE: Objection, your Honor, as to the price of imported oil on a particular day as it moves up and down in different reports.

THE COURT: I will permit him to answer.

Objection overruled. You may cross-examine him as to the ports and the types of oil.

A Yes, there is no question that I did know and no price of oil can be quoted even today exactly to the penny because it does vary but it was between $1 and one and a half dollars cheaper than any U. S. oil that could be obtained, per barrel.

Q At the meeting that you described at Warburg, can you tell us what was discussed and, to the best of your recollection, tell us who said what?

MR. MacCRATE: Objection, your Honor.

THE COURT: I will overrule the objection. Hasn't this meeting already been covered?

MR. FARRELL: The meeting has been covered --

THE COURT: Members of the jury, you will understand that there was nobody there from Phillips Petroleum Company but this is admissible in evidence to establish what if anything the plaintiff corporation did or caused to be done at that time; not for the truth of the conversations themselves.

Q Go ahead.

A The previous attempts to get a plant started in Puerto Rico were reviewed by Mr. Coan as I recall and the Warburgs said they could help with financing such a

project and basically that was it.

Q Any discussion of an import quota?

A Yes. The cornerstone --

THE COURT: What was the discussion?

A I am sorry. The discussion was that an import quota was absolutely essential to a plant in Puerto Rico.

Q Can you tell us the reason given for that?

A Yes. That there would be no point at all in importing oil from the United States to Puerto Rico and sending products back to the United States. It would be useless.

Q Was there a discussion of the source of the oil that would be imported into Puerto Rico?

A I can't be sure that it was at that meeting.

Q Do you recall anything else about that meeting?

A Basically no, I can't.

Q Subsequent to the meeting you just described, did you attend a meeting at which Mr. Robert Anderson was present?

A Yes, I have.

Q Will you tell us where that took place and approximately, to the best of your recollection, when it took place?

A It took place early in November.

Q What year?

A Of 1962, in Robert Anderson's office in Rockefeller Plaza.

Q Who was present?

A There was present myself and Mr. Shippee and I believe Mr. Little and the two gentlemen I mentioned from the Warburg Company and a representative from Kuhn Loeb and an expert that Kuhn Loeb hired who had been present at Gulf Oil because I remember I talked to him about having worked for Gulf Oil also.

Q What was the matter discussed at that meeting?

A In Robert Anderson's presence -- Mr. Coan was there too -- they described what had gone on in Puerto Rico and the need for this plant and the question of how it could be financed and no conclusions were drawn but for further study that would be made.

Q What did Mr. Anderson say if anything?

A He said he was interested. That is about all I can recall.

Q Thereafter did you attend another meeting with Mr. Anderson?

A Yes, very shortly, either the same day or the next day there was another meeting with Mr. Anderson.

Q Who was present at that meeting?

A As I recall just Mr. Anderson, Mr. Shippee and myself.

Q At that meeting can you tell me the contents of the discussion, telling me to the best of your recollection who said what?

A I believe Mr. Shippee told Mr. Anderson that we needed about 60,000 barrels a day of crude oil for this plant and that we had another problem. There would obviously be some gasoline and by-products that wouldn't be used in the petrochemical industry and those had to be taken by somebody.

Q What did Mr. Anderson say?

A He suggested that the Phillips Company would be a good company because they had oil in Venezuela available; that they had no refinery on the East Coast and thought they could possibly use one and, at that point he said is it all right if I call them and so right then he picked up the phone and called the chairman of the board of Phillips Company.

Q Who was that?

A That was a fellow -- I don't know his right name but the name was Boots Adams.

Q Do you recall was Mr. Adams in at that time?

A No, he was not available.

Q Shortly thereafter did Prudential receive a letter from the president of Phillips?

A Yes, two or three days later a letter came from Stanley Learned who was then president of Phillips.

Q During this period, Mr. Willey, did you meet with representatives of EDA?

A Yes. In November I did, on two different occasions.

Q Tell us to the best of your recollection the time and place of the first meeting?

A The first meeting as I recall was perhaps three days later after having received this letter from Mr. Learned. That meeting was, as I recall, in Warburg's office.

Q Can you tell me who was present at that meeting?

A Yes. There was Mr. Hernandez and another gentleman from EDA, Mr. Irizarry.

Q Let me interrupt you, is Mr. Hernandez you mentioned, is that Mr. Diaz-Hernandez?

A It is Mr. Diaz-Hernandez, yes. And myself and Tom Young was there at that meeting. That is the meeting which we presented, showed them the letter from Mr. Learned -- and myself. Mr. Shippee was not there.

I believe that is all I can remember as to who was present.

Q Can you tell me what was discussed?

A Yes.

Q Trying to tell me who said what to the best of your recollection?

A AsI recall, Mr. Hernandez certainly did some of the talking and seemed pleased with the fact that we had some promise of 60,000 barrels of crude and someone to take by-products they couldn't use. They would then go forward with an application to the Department of Interrior although at that time it wasn't said who would do it. There was discussion of that, to get the import quota.

Q You mentioned Mr. Young as being present at this meeting. Who is Mr. Young?

A Mr. Young is a consultant, an engineer who was hired as consultant by Prudential but whom we had known a number of years because he was years before an investor in Prudential Fund

Q Do you recall whether anything else was said at that meeting?

A No, I don't say tht I can.

Q Just for the record, Mr. Willey, you referred to a letter from Stanley Learned that you showed to the people from EDA at that meeting.

I show you Plaintiff's Exhibit 69 and ask you if that is a copy of the letter to which you referred?

A Yes, that is.

Q You mentioned another meeting with EDA. Can you tell us when and where that took place?

A Yes. A few days later there was a meeting in the EDA offices in New York.

Q Who was present at that meeting?

A At that meeting Mr. Shippee and myself and Mr. Anderson and Mr. Hernandez and Mr. Durand from Puerto Rico was there.

Q What was discussed at that meeting, again telling me to the best of your recollection who said what?

MR. MacCRATE: Forgive me.

Your Honor, may this be fixed as ebing in November 1962?

Would you fix the date, please?

THE WITNESS: I'm reasonably sure it was in November, just perhaps the 18th or 20th, some such date in November.

Q Could it have been December?

A It is possible, it is possible.

Q You remember the second meeting?

A Only two meetings. I only had two meetings

with people from Puerto Rico and this was the second and that meeting was to -- primarily Mr. Anderson introduced himself to these people and we introduced Mr. Anderson and reviewed his background as having been on the cabinet of two presidents and Mr. Anderson stated that he had a personal interest in this project and hoped he could further it to the benefit of Puerto Rico. That is all that really went on at the meeting.

Q Did you know at that time Mr. Anderson had a retainer agreement with Phillips?

A No, I didn't.

Q Subsequent to the meeting at EDA what did you do, you personally do with respect to the proposed project in Puerto Rico?

A I had a large number of meetings --

MR. MacCRATE: Your Honor, may I ask that, in view of the witness' uncertainty on dates, if we could establish what period we are now talking about?

THE COURT: Well, I think it will be brought out and if it is not you may cross-examine the witness as to the date.

A In the latter part of 1962, which would be in November and December and into 1963 and even beyond that, I had attended a large number of meetings with Mr. Coan and

with members of the chemistry industry, profession, including gentlemen from Monsanto and the Celanese Corporation and then later on representatives from the Phillips Company.

Q Can youtell us how many you mean by a large number of meeting?

A Perhaps a dozen.

Q Can you tell us, try to as best you can to think of those meetings specifically, where those meetings took place?

A A number of meetings took place in Mr. Coan's office on Park Avenue and then there were meetings in, I believe, Monsanto's office -- I'm not sure of that -- and meetings later on in Phillips' office in New York City.

Q I will come to the meetings with Phillips.

Did you have a meeting with a Mr. Lewis of Monsanto?

A Yes, I did.

(Continued on next page.)

Q Where did that take place?

A I don't remember that, but I remember the name Mr. Lewis of Monsanto and I wrote a memorandum on it about it.

Q I show you Plaintiff's Exhibit for identification 65, and ask if that refreshes your recollection as to where that meeting took place.

A Yes, it says here the meeting was in Mr. Coan's office again.

Q What was your purpose in meeting with Mr. Lewis?

A To determine what the requirements were for petrochemicals by the Monsanto Company, and they specifically told me what they wanted.

Q And did you refer to the same subject at other meetings, the other meetings you held with chemical companies, that is their requirements for petrochemicals?

A That was -- the principal concern was what products did they need for some proposed petrochemical plant.

Q During the month of December 1962, did you meet with any representatives of Phillips?

A Again, I don't remember the date, but I did meet with representatives of Phillips; a Mr. or Dr. Fischbeck.

Q Well, can you tell us approximately when that meeting took place?

A No. It was early, perhaps December of that year, yes, '62.

Q Do you know how that meeting came about?

A Yes. As I recall, when I went to the meeting this Mr. Fischbeck announced that he was assigned by Phillips to help us, to work with us.

Q And do you remember the discussion at the meeting with Mr. Fischbeck?

A Yes. Basically he discussed some chemical projects that might be set up in Puerto Rico as satellites for this core plant.

Q Now, at the meeting with Mr. Fischbeck to which you referred in your prior answer, did anyone refer to the letter from Mr. Learned which I just showed you, that is, for the record, Exhibit 69?

A I don't recall whether we showed Mr. Fischbeck this letter or not.

Q Did anyone refer to the letter?

A Refer to the letter? Well, yes, to the extent that we had been assured of a possible 60,000 barrels per day, that was the guideline for what you would have available for use in Puerto Rico.

Q In the course of November and December 1962, did you propose any changes in the proposed project as it had been conceived up to that time?

A Yes. For instance, in my meeting with Monsanto, they, in effect, told me they wanted the advantages of the import quota, and they wouldn't -- until we had an import quota or a core plant they would not make any deal with us, and I found this out, that this was a consistent pattern that Mr. Coan had gone through and failed on and we were failing on, and so at that time I invented the term "quasi-public utility" to change the whole aspect of the thing. You had to have a core plant. Nobody wanted to build a core plant if there were no satellite plants, and the satellites wouldn't come in until there was a core plant, so I proposed the concept of having a quasi-public utility, a core plant which would work with the government in Puerto Rico, and virtually accept almost anybody who wanted to put in a chemical plant that could use any of the chemicals from that plant. And that turned the thing around.

Q Did you discuss that with Mr. Shippee and Mr. Young?

A Yes, I did and he immediately put in their draft of the report.

THE COURT: "He" being who?

THE WITNESS: Mr. Shippee put it in the draft.

Q Now, when you say the draft report, I show you Plaintiff's Exhibit 214 and ask if that is thedocument you're referring to.

A It is a draft of the same document, yes. Which one, I don't know. We must have had ten of them.

Q Well, I call your attention to --

MR. FARRELL: I think I will have the clerk mark this page.

THE COURT: Isn't the entire book in evidence?

MR. FARRELL: Yes, but I want to show what I'm showing him.

THE COURT: All right.

Mr. Willey, were you in the courtroom all day today?

THE WITNESS: Yes, sir.

THE COURT: During the prior testimony we took today?

THE WITNESS: Yes, sir.

THE COURT: Were you here yesterday as well?

THE WITNESS: Part of the time.

THE COURT: Were you here any other day of the

trial?

THE WITNESS: No.

THE COURT: What time did you get here yesterday?

THE WITNESS: Well, Mr. Shippee was on the stand, and let's see, what time did I get here? Oh, I guess 10:30 or something like that.

THE COURT: And you were here from 10:30 for the balance of the day?

THE WITNESS: Yes, I was.

(Plaintiff's Exhibit 214D was marked for identification.)

Q Now, I show you the page that has just been marked and ask if that page refers to the statemetn in the report that you said that Mr. Shippee put in.

A I don't remember. I was looking for the words "quasi-public utility." I don't see them on that page.

Q Well, I will show you --

MR. FARRELL: I will have to mark this page, too.

(Plaintiff's Exhibit 214E was marked for identification.)

Q I show you 214E and ask if that is a report, or that is a statement that Mr. Shippee put into the report,

and to which you referred in your prior answer?

MR. MacCRATE: I object to the form of the question. It's an entire page of the document.

THE COURT: Reframe the question.

Q Does that page contain the material that you proposed to Mr. Shippee and which you said went into the report?

A Yes, sir, that does.

Q Or some of the material?

A Yes.

THE COURT: And you say you're the first person to have used the expression "quasi-public utility" in connection with this core plant?

THE WITNESS: Yes, sir.

Q Now, will you tell us what your idea was of a quasi-public utility, as applied to this project?

A Well, the concept was to get a core plant constructed, first get the import quota, then construct a core plant and then accept applications from anybody who wanted to put in some kind of chemical plant that could use these feedstocks, to cooperate with the Puerto Rican government, like a utility, like Con Ed would put a light in, they would put in any plant that it could reasonably be fitted in and accept it, regardless of the profit involved and also

the other limitation of a public utility is that you cannot make a huge profit. You can make -- you are not guaranteed any profit at all, but you cannot make a huge one. That and the acceptability of almost anybody who would apply, to guarantee there'd be plenty of plants and plenty of employment in Puerto Rico.

Q And the objective of this proposal was to keep the petrochemical feedstreams in Puerto Rico?

A Yes, sir.

Q And didyou discuss this proposal with the representatives of the EDA?

A No, I did not.

Q Were you present at any discussions with the EDA where this proposal was discussed?

A I think not.

Q Mr. Willey, did you also discuss the proposal that you just referred to with Mr. Young?

A Yes, I did.

Q And did you hold meetings with Mr. Young and Mr. Shippee to discuss this matter during this period?

A Oh, I would hardly say meetings. I think I was able to do the whole thing in a matter of minutes. It was just a concept.

Q But did you also hold meetings with respect to

the preparation of the application for the import quota?

A Oh, yes, I discussed that with Mr. Young and Mr. Shippee a number of times.

Q Did you discuss also the drafts of the proposal? Did you review the drafts and amend them, revise them?

A Yes, I did.

Q And you did that with Mr. Young and Mr. Shippee?

A Yes.

Q You were then president of Prudential Connecticut, is that correct?

A Correct.

Q How much time did you spend on this project during the months of November and December 1962?

A OH, that would be very hard to say, since I was basically running Prudential. I was president and treasurer. But possibly half my time for a couple of months.

Q Now, at the meeting with Mr. Fischbeck, where did that meeting take place?

A The first meeting was in the office of the Phillips Company in New York.

Q Can you tell us anything further about that meeting other than what you have just told us?

A Not really, because I had several meetings in

which Mr. Fischbeck was present. Also, he brought other representatives of Phillips whose names and positions I don't recall.

Q Now, can you tell us, to the best of your recollection, when the next meeting with Mr. Fischbeck was?

A No, I cannot. I had several meetings, not very many meetings with Mr. Fischbeck, but two or three, perhaps one in Mr. Coan's office.

Q Well, can you tell us where the second meeting with Mr. Fischbeck took place, even if you can't place the date?

A No, I can't.

Q Can you tell us who -- this took place early in 1963, Mr. Willey?

A I believe so, yes.

Q Now, can you tell us who was present at that meeting?

A At the first meeting with Mr. Fischbeck?

Q We are finished with the first meeting. The second meeting.

A The second meeting?

Q Yes.

A Well, there again, usually there were one or

two representatives of Phillips, whose names I never did remember, and almost always Mr. Coan and Mr. Young.

Q And do you recall at that meeting any discussion of the charge stock of the proposed petrochemical facility?

A Yes, that was discussed, and --

Q Wait now. Tell me the content of the discussion, who said what. Tell us what charge stock is first, sir.

A Well, charge stock is the material you put in at the one end of the refinery in order to get out various products from the other end.

Q Now, tell us --

A Who said it? Mr. Young or myself must have said it -- I don't know which -- that one of the obvious feedstocks is Venezuelan crude oil and another one is any breakdown product of that such as naphtha, and those are the two most obvious things; therefore we mentioned those.

Q What is naphtha?

A Naphtha is light ends of crude oil.

Q What does that mean, Mr. Willey?

A Well, it means that crude oil is heated, the lighter ends come off, like, and leave the residual, the heavy oil, -- the reason this crude oil, naphtha exists in the area of Venezuela is that the heavy stuff was sent

to Europe for boilers and the light ends were used more, more for chemical plants, but it is a part of the same oil.

Q Was this idea of using naphtha discussed with Mr. Fischbeck?

A Oh, I'm sure it was.

Q Do you remember it was, by someone, not necessarily you.

A Well, I can't say for positively sure, but it is such common knowledge that I'm sure we kicked around what people might want. They might want naphtha, they might want crude. I can't be sure.

Q Now, again, limiting your attention as best you can to the second meeting with Mr. Fischbeck, what else was discussed at that meeting, and again, tell me who said what, if you can?

A Well, there again, Mr. Fischbeck talked about possible products that might use the refinery, including some of the Phillips Petroleum Company also, which is a chemical manufacturer, separately from having refineries. I believe we discussed their products, products like ethylene that they made, that they extracted, and then we talked about others that might be made with one end of the refinery, and I don't recall exactly what they were.

And we discussed different companies that

might be interested, and that sort of thing.

Q Do you recall the third meeting with Mr. Fischbeck?

A No. I don't. I'm sure there was a third.

Q That you attended?

A Yes, that I attended. There were at least two and perhaps more, but not a great number.

Q Do you know whether any other representatives of Prudential, such as Mr. Shippee or Mr. Young attended other meetings with Mr. Fischbeck?

A Yes. Mr. Young probably -- well, as far as I know, Mr. Young attended every meeting, and Mr. Shippee--

MR. MacCRATE: I object, your Honor. There is no indication that this witness --

THE COURT: I will strike that out as far as he knows he attended every meeting. Frame another question, please.

Q Now, in the spring of 1963, Mr. Willey, were you advised that Mr. Fischbeck was to prepare marketing studies?

A Yes, I was.

Q And who advised you of that?

A Mr. Shippee.

Q About when was that, if you can recall?

A That I can't place a date.

Q Subsequent to that time, were you advised that Phillips had declined to prepare any such marketing studies?

A Yes, I was.

Q Who advised you of that?

A I believe Mr. Shippee.

Q During your discussions, any discussions which you attended with Mr. Fischbeck, was there a discussion of who would sign the application for the import quota?

MR. MacCRATE: May I have that question, please?

THE COURT: The reporter can read it back.

(Question read.)

A I don't recall any, no.

Q In any event, you were not present when that subject was discussed, if it was discussed?

A No.

Q Now, I show you PLaintiff's Exhibit 107, which has been admitted, and ask if this refreshes your recollection as to when you heard that Phillips had declined to proceed with marketing studies?

A Yes, I now remember having read that letter at the time.

Q At the time of its date?

A Of its date or the day after, yes.

Q Which is April 29, 1963?

A Correct.

Q Now, during this period in 1963, the first few months of 1963, did you do work on the proposed project other than the meeting with Mr. Fischbeck, to which you referred?

A Yes, meetings with Mr. Coan.

Q And do you recall where those meetings took place?

A Well, mostly they were in Mr. Coan's office on Park Avenue.

Q Can you tell us the subjects that were discussed at those meetings? Try to place the meetings if you can, to the best of your recollection.

A I can't place them more specifically, but we discussed a number of things, with Mr. Coan and with Mr. Young virtually always present, relating to other things that might be necessary to have in Puerto Rico to help out. You might not need only a refinery, but you might need a sodium hydroxide plant or other adjuncts that would be necessary to get people to come there. If there was no sodium hydroxide present, perhaps you couldn't get such, we discussed that.

Mr. Young was the one who mentioned the things that we might need other than the refinery itself.

Q Did you have any meetings during that period with representatives of chemical companies?

A I don't recall it specifically.

THE COURT: I think at this time we will recess for lunch, gentlemen.

Members of the jury, will you return at 2:30, and to assist you in planning, I must inform you that we are going to break for the day at about ten minutes of 4. The reason for that is not just because it is Friday, but there happens to be a meeting of the court scheduled for 4 o'clock which I am expected to attend.

You may now withdraw from the courtroom.

(Jury left the courtroom.)

MR. FARRELL: Your Honor, I wanted to make, in the absence of the jury, a point about this exhibit, 219, which I offered the first thing this morning and to which objection was sustained.

MR. MacCRATE: I would ask that it also be in the absence of Mr. Willey.

THE COURT: Yes. I must say that the Court, of course, is not acquainted with Mr. Willey, so I didn't realize he was a witness.

MR. FARRELL: Mr. MacCrate is acquainted with Mr. Willey. He knew he was here.

THE COURT: Mr. Willey, will you do us the courtesy of stepping out of the courtroom? We don't intend anything by asking you to do that. You go to lunch and we will see you at 2:30.

(Witness left the courtroom.)

MR. FARRELL: Your Honor, this is a copy of the last draft of the application, the June 1963 copy, which was produced by Mr. MacCrate's office.

THE COURT: I heard all that before. As I understood the objection to it was merely that there was no proper foundation or basis to offer it during the redirect examination of Mr. Shippee. I thought that was the only objection they were taking to it.

MR. FARRELL: I didn't understand that at all.

THE COURT: The pretrial order indicates that it is genuine, and there is just no explanation of who did it or where they gave it to anybody or anything like that. If Mr. Willey can testify about the papers, I don't think there is going to be any objection to it. Is there, Mr. MacCrate?

MR. MacCRATE: Well, if Mr. Willey can identify

this copy as something that he delivered to someone at Phillips, he would be testimonially qualified to do that.

THE COURT: I don't think there is any doubt about that.

MR. MacCRATE: But to say that it is a document that was once in the possession of Prudential, on its face the document is a duplicate of others we have seen, so that I don't know what is the particular point of introducing it in the course of this witness' testimony, unless there is a proffer that relates it specifically to Mr. Willey.

MR. MARKS: Judge, we are not offering this with regard to Mr. Willey's testimony. This is separate and apart from that. This brochure, which is Prudential's brochure, was produced from Phillips' file bearing a Phillips cover. This proves that Phillips had access to this report and of course we have maintained all along that they have copied it, and this document was produced by Mr. MacCrate. It is authenticated as coming from Phillips' file. It proves access, and that is the point of its admission, not through Mr. Willey, but --

THE COURT: What you want to do is prove the action from circumstantial evidence with these charts that I let in over objection.

MR. MARKS: Yes, but this was found, the complete report, in Phillips' own files.

THE COURT: If Mr. Willey says he gave a copy to Mr. Fischbeck that is perfectly all right with me.

MR. MARKS: Nobody says that except that Phillips admits that they had this in thier files in 1967 and now they say they had it but before that they didn't even admit having access to it.

THE COURT: Where in the trial record is there an admission that they had it?

MR. MARKS: In Mr. MacCrate's correspondence he represents in his letters that this was in their file. I don't think there is any dispute on that. There is now no doubt that this is authentic, that it has come from the Phillips's files and we ask Mr. MacCrate if he had a witness where they knew when they got it and could identify it and from whom and so forth and he produced no one to state that this came from the Phillips' files in 1967 and we are entitled to admit this to show that there was access.

THE COURT: I think that is well taken. It is

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admissible.

MR. MacCRATE: Well, your Honor, this is a document that was in the Phillips' files and was produced. Now to say that we had at any time denied having it is untrue.

THE COURT: They are in effect asking and stating that they would like to offer this in evidence with a stipulation it was produced from Phillips' files where it was located in 1967.

MR. MacCRATE: The exact circumstances under which this was located in 1967 has been lost to us. We do not know. We know it was gathered at that time.

THE COURT: But we have advanced from the old concept of the litigation process. If everybody in the courtroom except the Court and the jury knows in his heart, every lawyer knows in his heart that that paper was in the possession of Phillips at a given date within its general files and relates to this project, there is no reason why such a fact should be in dispute. We don't try undisputed facts. If it requires it, I will recess the trial and he can depose the file clerk out in Bartlesville and it doesn't make any sense, gentlemen.

MR. MacCRATE: There is more to it than that.

THE COURT: I have been waiting to hear.

rs3

MR. MacCRATE: If Mr. Willey were to have given a copy of this to Mr. Coan and that copy was provided to Phillips, that would be one way.

THE COURT: Suppose Mr. Fischbeck picked it up on the subway?

MR. MacCRATE: That would be another way it came in.

THE COURT: But they don't care where you got this.

MR. MARKS: That is the point. There may be access but the fact that they have it, the jury is entitled to know and the date on the top page says January 1964.

MR. MacCRATE: Your Honor, we will stipulate that Plaintiff's Exhibit 219 was located in 1967 in the New York office of Phillips Petroleum on Broadway.

THE COURT: All right, it may be so stipulated in the presence of the jury at a convenient time this afternoon.

We will be in recess.

(Luncheon recess taken until 2.30 p.m.)

- -

AFTERNOON SESSION

(In open court - jury present.)

E D W A R D J. W I L L E Y, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. FARRELL:

Q Mr. Willey, before lunch you had told us about meetings that you attended during 1962 and '63, and I want to ask you, did you do any other work other than those meetings and the work on the brochure that you testified about in connection with the project?

A Oh, yes, I told you it took about half my time for several months and I didn't do that with a few meetings. I did a lot of other work. I did research work. Iread books, while I ama chemist, I don't know all there is to know about it by any means, so I read books trying to figure out what we could do, how we could help out this project, because I was intensely interested in really getting it going, and I worked on it.

As far as meetings go, they weren't ten minutes either. And I had many discussions with Mr. Shippee, who worked on it by the hour, and so did I. It wasn't a matter -- I don't want to mislead you with the concept of it taking a short time, but there was some real work to make it go.

Q Well how about the time taken in drafting the brochure that you were looking at before lunch?

A Well, I read and re-read and re-read and suggested and there again it was a great deal of work.

Q Now, Mr. Willey, what was Mr. Shippee's function in connection with the work on this project, as you understood it?

MR. MacCRATE: Objection, your Honor.

THE COURT: In the form the question has been placed I will sustain the objection.

Q What was your understanding of Mr. Shippee's function in this project?

MR. MacCRATE: Objection.

THE COURT: I will sustain that.

Q What was Mr. Shippee's function?

MR. MacCRATE: Objection.

THE COURT: Did you give Mr. Shippee any directions or instructions as to what if anything he was to do in this matter?

MR. FARRELL: No, your Honor that's not --

THE COURT: He's the president of Prudential at that time.

MR. FARRELL: Shippee was chairman of the board.

THE COURT: All right, then, I will sustain the objection.

Q Did Mr. Shippee give you any suggestions or directions with respect to the project?

A Yes. Mr. Shippee was in charge of the whole project, bringing the whole thing together. And, yes, he asked me to do things which I did. He was chairman of the board, but we were really partners in our business and we made suggestions to each other. I considered him to be the one who was really pulling the whole thing together.

Q How about Mr. Young? What was his function?

A Mr. Young's function was technical, purely technical. He wasn't running it at all. He was doing technical things.

Q Now, Mr. Willey, subsequent to July, 1963, did Prudential ever file an application for an import quota in its own name?

A No.

Q Did you unerstand that Phillips was filing such an application?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained as to what he understood.

Q Did you know that Phillips filed such an

application?

A Yes.

Q Did you, in fact, know when that application was filed?

A At that time, I did not. Some time later I found out from the Department of Interior when it was filed, yes.

Q Did Prudential, after July 1963, attempt to interest any other oil companies in the proposed petrochemical project in Puerto Rico?

A No.

MR. MacCRATE: Objection, your Honor.

THE COURT: Overruled. Is the objection to the form of the question?

MR. MacCRATE: Yes.

THE COURT: All right. Reframe the question.

Q Subsequent to July 1963, did Prudential approach any oil companies other than Phillips with respect to this project?

A No.

MR. MacCRATE: Objection, your Honor. This witness can testify as to what he did.

THE COURT: Maybe, since he's president of Prudential he can testify as to what persons under his

supervision and control did, if he knows.

Q Well, do you know of any approach, Mr. Willey?

THE COURT: Are you tryint to prove a negative that they didn't go to any other oil company?

MR. FARRELL: Sure. Yes, I am.

THE COURT: Don't waste time with it. No suggestion that they did.

Q Was the failure to approach any oil companies the fact that you understood you were working together with Phillips?

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained.

MR. FARRELL: Goes directly to issues 5, 6, and 8, your Honor.

THE COURT: Even so, you are asking for the operations of his own mind.

MR. FARRELL: That is just the point, your Honor, the operation of his mind is an issue in this cas.e

THE COURT: I won't take it as presented by that question. But there is no evidence inthe record that Mr. Shippee or Mr. Willey or anyone acting for Prudential Oil Corporation of Connecticut presented this proposal to any company, any petroleum company, other than Phillips.

Is that a fair statement? Do you all agree on that?

MR. FARRELL: We agree on that statement.

THE COURT: Do you agree on that, Mr. MacCarate?

MR. MacCRATE: Your Honor, the proposal that is being spoken of raises a question. We certainly stipulate that Mr. Willey and Mr. Shippee and Mr. Young approached no major oil company after July 1963.

Q And was that in reliance, Mr. Willey, on the fact that Phillips had filed an application or was filing an application for a quota?

MR. MacCRATE: Objection, your Honor.

MR. FARRELL: Your Honor, that is directly on number 8, issue number 8.

Your Honor, I think it would be easier -- well, it is 8 in the pretrial order too, your Honor.

MR. MacCRATE: The question is leading and calls for a conclusion.

THE COURT: Of course it is leading, but -- what page number is that in the pretrial order?

MR. FARRELL: Your Honor, I will hand this up. I have the shorter version that Mr. MacCrate prepared for us.

THE COURT: All right.

(Pause.)

THE COURT: Well, the form of the question is bad. The issue is open for litigation. He may be examined as to what persons acting for Phillips told him, and I suppose within reason as to what they did not tell him, although I don't see any necessity to prove a negative if you are not required to do so. But he may be asked whether Phillips ever informedhim or any persons acting for Phillips ever informed him of any particular fact or any particular intention or course of proposed action on the part of Phillips at any particular time.

Q Mr. Willey, was it reported to you in 1963 that Phillips was proceeding with the filing of an application for an oil import quota?

A Yes.

Q And who was it that reported that to you?

A Mr. Shippee.

Q And at that time what did Mr. Shippee say to you?

A He said they had a meeting with Mr. Anderson and Mr. Chapman,and Mr. Anderson and Mr. Chapman had prevailed upon him or had told him that he should file in Phillips' name instead of Prudential's name.

Q Thereafter --

Q Thereafter --

MR. MACCRATE: Could we fix the date, please?

Q Well, that would be after the airplane accident, Mr. Willey?

A Yes, just after I'd say.

Q Or after Mr. Shippee returned to work?

A No; even before that. I was in constant touch with Mr. Shippee during his convalescence at his home, immediately, within two or three days after the accident, and from then on the rest of the year.

Q And did you live near Mr. Shippee?

A A few blocks away, yes.

Q Mr. Willey, did there come a time when it was reported to you that -- did there come a time when you arranged a meeting with Mr. Stanley Learned?

A Yes, in early 19 --

Q Tell us how that came about.

A Mr. Shippee, I believe, suggested it to Mr. WRight that we arrange a meeting, and Mr. Shippee and I went to the meeting.

Q And where did the meeting take place?

A In Bartlesville, Oklahoma, in Mr. Learned's office.

Q And who was present at the meeting?

A As I recall, just Mr. Shippee, Mr. WRight and Mr. Learned and myself.

Q And can you tell us the substance of the conversation, telling us who said what?

A Yes. First, Mr. Wright reviewed our position in the thing, in the whole project.

Q By "our," you mean Prudential?

A Prudential's position in the whole project, from back in 1962, to Mr. Learned, and then Mr. Learned discussed with us some chemical plant possibilities, and finally said to Mr. Shippee, "We are weak in sales. Could you help us with sales for some of these proposed plants?"

Mr. Shippee said, "Yes," he could.

Q Do you recall anything else,Mr. Willey?

A Not particularly.

Q And thereafter did you have another meeting with Mr. Learned?

A Yes, I did, about a month of two later.

Q And how did that meeting come about?

A Well, I was not satisfied with the first meeting. I felt that Mr. WRight, who was scared to death of Mr. Learned, because he owned, Mr. Wright owned a trucking company that Phillips did business with.

MR. MacCRATE: Objection.

THE COURT: Yes, I will sustain the objection. Strike out the answer. The jury will disregard it. The question is who called the meeting, did you call the meeting?

THE WITNESS: I did. I called [illegible] Learned's office and had the meeting arranged myself, just alone.

Q And thereafter did you go to Bartlesville to meet with Mr. Learned?

A Yes, I did.

Q And can you tell us where that meeting took place?

A Again, in Mr. Learned's office.

Q Can you tell us how long that meeting lasted?

A Oh, perhaps an hour.

Q And can you tell us the discussion that took place during that meeting?

A Yes. It was mostly on my part. I reviewed for Mr. Learned what Prudential had done since October of '62; that we considered ourselves as having a part of the deal, and I just wanted to make it clear that we also had Mr. Anderson working with us and that that might be helpful to him.

THE COURT: What date was this?

THE WITNESS: Perhaps March of 1962.

Q 2?

A 3, 3, 1963.

Q No, Mr. Willey.

A Sorry. '65.

Q '65?

A Sorry, '65.

Q Did Mr. Learned say anything?

A Basically nothing. I looked him right in the eye and told him these things and gave him a little memo that I had received from Prudential, which he read and handed back to me, and he smiled and said nothing. I was trying to get him to say that we were in on the deal, but he didn't say that, nor did he deny it in any way.

Q Subsequent to the meeting with Mr. Learned in March 1965, did Prudential talk further with Phillips with respect to their interest in the project?

A I don't recall. I left Prudential in the middle of 1964, and I don't know if there was any further conversations after that. I don't know.

THE COURT: You mean you were not with Prudential in March of '65 when you had this meeting?

THE WITNESS: No, I was not. I was an attorney for Prudential. I had an office in Washington D.C. from whence I went to Bartlesville.

THE COURT: Is there any objection?

MR. MacCRATE: I move that the witness' testimony be stricken to the extent that he said that he was Prudential in his answer.

THE COURT: Well, he didn't say really he was Prudential. But the jury now understands that this witness left his position as president of Prudential -- when again, sir?

THE WITNESS: About June of '64.

THE COURT: All right.

Q Well, let me show you PLaintiff's Exhibit 178 for identification, and ask if that refreshes your recollection as to whether there were continuing conversations between Prudential and Phillips with respect to Prudential's interest in the project.

THE COURT: Is this 174 we're talking about?

MR. FARRELL: 178, your Honor.

A Yes, I remember writing this letter.

Q I asked you if that refreshes your recollection as to whether there were conversations between Prudential and Phillips concerning Prudential's interest in the core plant, the core project.

A Well, there certainly were discussions with

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Mr. Anderson, who was supposedly, or I thought in contact with Phillips .

MR. FARRELL: Your Honor, I offer this document in evidence.

MR. MacCRATE: Objection, your HOnor.

THE COURT: Well, since it is addressed to Mr. Anderson -- what is the date of Exhibit 178?

MR. FARRELL: July 29, 1965.

THE COURT: My copy is blurred. Well, it appearing that there is nothing on its face to connect it with Phillips, except that it was sent to Anderson, and it also appearing that this witness was not an officer or employee of Prudential at the time the letter was sent, I will reserve on it until such time as you connect it up with Phillips.

MR. FARRELL: With Phillips, your Honor?

THE COURT: I think primarily with Phillips. It is on a Prudential letterhead so at least I take it that is what the letterhead is . I can't read my copy that well. What does it say under the tag?

THE WITNESS: Yes, it says Prudential Oil Corporation.

THE COURT: All right. I will reserve on it. Where were you located in July 1965?

THE WITNESS: In Washington, D.C.

THE COURT: And you dictated this letter in New York, did you?

THE WITNESS: Apparentely, from the letter, yes, sir. I communicated back and forth between New York and Washington quite frequently. I may be in their office that day and wrote it.

Q Now, Mr. Willey, I just have one question about the meeting with Mr. Anderson in early November, which you testified about before lunch.

MR. MacCRATE: What year, Mr. Farrell?

MR. FARRELL: 1962.

Q Can you tell me, again, what you said to Mr. Anderson, or what Mr. Shippee said to Mr. Anderson at that meeting?

A Yes. We said we needed 60,000 barrels of crude oil, and we needed somebody to take some of these products that might not be used in chemical plants.

Q What did Mr. Anderson say?

A Mr. Anderson said this is a case where you need a strong partner and I think I can get you one, and went down to describe Phillips' activities in Venezuela and the fact that they didn't have a refinery on the East Coast and he thought they would be a good partn er.

Q Subsequent to 1965, did you attend a meeting with a Mr. Johnstone of Phillips Petroleum Company?

A I don't recall it.

Q Let me show you Plaintiff's Exhibit 187 for identification and ask you if that refreshes your recollection?

A Yes, it does now that I read this.

Q You attended a meeting with Mr. Johnstone?

A Yes.

MR. FARRELL: That is all I have, your Honor.

THE COURT: All right.

(Defendant's Exhibit 324 was marked for identification.)

CROSS EXAMINATION

BY MR. McCRATE:

Q Mr. Willey over the luncheon recess did you have occasion to refresh your recollection as to the meeting with Mr. Learned in November 1962 to which you

just further testified?

MR. FARRELL: I object to this, there is no testimony before lunch.

THE COURT: About that meeting?

MR. FARRELL: About that meeting.

THE COURT: The jury recollection as to the testimony will control. However, I will permit him to answer the question.

Q Were you asked before your lunch about your meeting in November 1962 with Mr. Anderson?

A You got me confused.

THE COURT: All right, gentlemen.

MR. MacCRATE: I will reframe the question.

Q I am referring to a meeting in November 1962 that you had with Mr. Anderson. Do you understand that?

A Which meeting?

Q Mr. Farrell just asked you a question about a meeting that you had with Mr. Anderson in November 1962.

Do you recall that?

A I said I had two meetings with Mr. Anderson the same day or the day after. I don't know which one you are referring to.

Q Which one were you referring to a few minutes ago when you described to the jury what was said at that

meeting?

A Let's say the meeting at which Mr. Shippee, myself and Mr. Anderson were together, that meeting. I can ientify that that way.

Q You described at that meeting a few minutes ago what was aid, did you not?

A Yes.

Q My question is over the luncheon recess did you have occasion to refresh your recollection as to what was said at that meeting?

A Yes.

Q How did you refresh your recollection?

A Well, the attorneys asked me was there anything else and I remembered that Mr. Anderson had said and Mr. Shippee had said that and it came back to me too that he talked about you need a strong partner.

Q The attorneys asked you specifically?

A They didn't tell me to say this, they wanted to know if something else happened. I said yes, I forgot to mention Mr. Anderson talked about a strong partner and he did and I had forgotten to say it. That is all.

Q Did you examine any papers?

A No, I did not.

Q Were you aware in 1965 of the suit that Mr.

Shippee brought against Mohawk Airlines?

A No, I was not.

Q You were in the courtroom yesterday, were you not?

MR. FARRELL: I object to that.

THE COURT: It is repetitious. He said he was in the courtroom yesterday.

Q Had you heard of that suit prior to that time?

A No. I heard there was a settlement with Mr. Shippee involving the airline. I didn't know there was a suit.

Q Are your expenses incident to coming here to testify today being paid by the plaintiff?

A No, out of my own pocket.

Q You have described your conception and formulation of a conception of a quasi-public utility and you indicated that the concept came to be expressed in the brochure of Prudential, did you not?

A Yes.

Q Have you been able to locate where in the brochure it appears?

MR. FARRELL: Your Honor, I object to the form of the question.

THE COURT: I will sustain it as to form but the

witness may be permitted to identify the brochure in which it appears. I thought we had covered that.

THE WITNESS: I already identified it.

Q Is the brochure to which you refer Plaintiff's Exhibit 215?

A I don't know. It is one of this type.

Q Well, can you --

A 215 means nothing to me.

Q But I am showing you the document, Mr. Willey. Can you identify that as the final brochure of Prudential?

A I believe it is but I certainly am not sure.

Q Where in this exhibit, 215, does the reference to a quasi-public utility appear?

A On the page marked by my attorney, whichever page that was, marked by the Court.

Q The reference is here in Chapter 4, is it not, under the heading "Chemical Implementation"?

A Yes.

Q This concept of a quasi-public utility, was that central to your concept of this petrochemical plant?

MR. FARRELL: Objection.

THE COURT: I think I will allow the question. I don't know what you mean by central. Frame

another question.

Q Was the notion of a quasi-public utility the central aspect or the main idea that you contributed to this?

MR. FARRELL: Objection.

THE COURT: I will sustain the objection in that form.

Q The idea of calling this concept a quasi-public utility was yours, was it not?

A Yes.

Q You gave that idea to Mr. Shippee, is that right?

A Yes.

Q You gave him that idea at what time?

A I can't say but very early, perhaps the end of November or something like that. Some time in November I guess is best I can recall.

Q 1962?

A Of 1962.

Q Was this an important concept to the program that you were proposing?

MR. FARRELL: Objection.

THE COURT: I think he told you that this morning on direct examination, Mr. Farrell. I will let

him answer that.

A Certainly it was the difference between the miserable failure that preceded it to this point where it suddenly turned.

Q That is what made the difference?

A No, sir, I wouldn't answer that question that way. Mr. Shippee mostly made the difference. He took this plan and ran with it when everything failed. I merely added this which helped so it wasn't the diference.

Q The two differences was the individual, Mr. Shippee, and this concept, is that right?

MR. FARRELL: Objection.

THE COURT: Overruled.

This is in his opinion that you are asking him?

A No, it wasn't only Mr. Shippee and this. It was a team, a whole group of people. It was Mr. Anderson, Mr. Hernandez, Mr. Shippee -- he brought the whole thing together. This was one of the things that helped turn it but this was a team effort. It wasn't something that a man did in one day.

Q Mr. Diaz-Hernandez was here in the EDA office in New York, was he not?

A At some times, yes.

Q Since 1961 he had been working on these projects

trying to encourage private industry to come in and provide the basis for a petrochemical industry in Puerto Rico?

A Yes.

Q But the three things that you have now mentioned are Mr. Shippee, the individual, the concept of a quasi-public utility and a team that was brought together; is that it?

MR. FARRELL: Objection, your Honor, not what he said.

THE COURT: If it is not, he can say so.

A I find it difficult to answer your question. You are trying to limit me and there was a lot of things and this was very, very important, absolutely very important but not the only one. It was part of this whole effort and it was a big effort. It wasn't a little effort.

And Mr. Shippee was an important part and so was this suggestion and so were other people like Tom Young, a lot of people, a lot of work and a lot went into this. It is not just that suggestion.

Q Were you in the courtroom yesterday, Mr. Willey, when Mr. Farrell was talking about this chart that has been marked as Plaintiff's Exhibit 224-B?

A Yes, I heard something about it.

Q I would like you to examine this and indicate if you can find any place on it a reference to a quasi-public utility?

MR. FARRELL: Objection, your Honor. It speaks for itself.

THE COURT: Is it conceded it is not on there? Otherwise I will let him show it to the jury and they can look for themselves.

MR. FARRELL: Let him show it to the jury.

THE COURT: Is it on there or isn't it?

THE WITNESS: I have to read it.

THE COURT: Is it on this exhibit or not?

MR. FARRELL: Not qusi-public utility in those words but we would argue --

MR. MacCRATE: Argument I think can wait.

THE COURT: Argument can wait but we don't have to ask this witness about things that can't be disputed. What is on that exhibit is something that the jury in due time can read. Let us put it down .

MR. FARRELL: The words are not there.

THE COURT: Put it down and it speaks for itself. It is in evidence.

Let us go forward with this trial and find out what needs to be found out and send this man back to San

Antonio.

Q Mr. Willey, did your concept of a quasi-public utility include the idea that if the refinery having to make a chemical would suffer a loss, that EDA would undertake to make good that loss?

A I had no conversation with EDA about it so I don't know.

Q Did your concept include that?

A I just don't -- no, I don't think so.

Q There was no idea of an investment guarantee in your concept?

A No.

Q You indicated that the petrochemical feedstock fed out from the plant would have to be made regardless of the profit involved; is that part of your idea?

A I would say within some reason.

Q Well, can you define that boundary of reason for us?

A No, I can only say within some reason. More or less a right of first refusal. They could refuse it under some circumstances.

When I say quasi, I didn't say public utility, semi-public utility. A public utility has to take an electric customer whether they lose money or not. This

wouldn't necessarily be true. Maybe to some limited extent to employ people in Puerto Rico but not redesign a plant to take on a customer and lose money.

Q Your example of Con Ed having to furnish electricity to someone was an inappropriate one?

A No, it wasn't inappropriate, it was illustrative. I said quasi and I didn't say public utility. I said quasi, semi-public utility and that is a clear distinction.

Q The right of first refusal is possessed by whom, EDA, by Propco or by some prospective purchaser?

A First of all I think it was -- it would be by the core plant. The core plant would have the -- if any plant was to come in Puerto Rico, the owners of the core plant would have the right of first refusal on anything moving into Puerto Rico.

Q Your notion was that no new business could locate in Puerto Rico unless that business agreed to buy from Propco?

A I didn't say that.

Q What was your idea?

A I used the words right of first refusal. They ought to try to get into this core plant because this was going to be -- this core plant has reasonable flexible feedstocks whereas the other plant, the two plants that

were there already were making all the gasoline they could.

This was a completely different concept to make feedstocks and they should come to -- if somebody was coming in with a newer product to the chemical plant, not business -- you used the word business, too broad. Talking only about presented to a chemical plant, they should come to this company and see if they could make it.

If they had someone in mind they ought to come here first because this is the reason these people were going to build this core plant, to get all the business they could within reason.

Q Who would tell a business that was proposing to locate in Puerto Rico that it had to go first to Propco?

A I would say the EDA, the Puerto Ricans.

Q So what you were asking was for EDA to make a declaration that any chemical company that wanted to produce anything within Puerto Rico had to first come to this proposed company?

MR. FARRELL: Objection, your Honor.

THE COURT: Overruled. The witness may answer.

A I don't know at that time how far this went.

I was more concerned about this terrible problem that had been faced before in that the people in Puerto Rico and the people in the Department of Interior didn't want somebody to put a core plant and send the products somewhere else. We were working with the Puerto Rican Government in every way possible to get plants at the end of that refinery.

Q In other words, to get customers for what you would build?

A Right.

Q Isn't that a rather normal activity of anyone who wants to sell product?

A No, because I was saying here it went further than that. The plant couldn't apply pressure, the core plant couldn't decide whether they wanted to take the customer or not. The Government could use pressure and say you ought to take it because we need the employment here in Puerto Rico.

(Continued on next page.)

Q Mr. Willey, did you give a copy of Plaintiff's Exhibit 215, the PROPCO brochure, to Mr. Coan?

A I personally did not.

Q Did you send it to Mr. Coan?

A No. Mr. Shippee arranged distribution as far as I know. I didn't give any copies to anybody.

Q On what basis did you testify in 1967 that it was sent to Mr. Coan, accepted by him?

MR. FARRELL: Objection to that, your Honor.

THE COURT: He is trying to save time. Read the question and answer.

MR. FARRELL: At least he should tell us where he's reading from.

THE COURT: Put the question, ask the witness "Do you recall being asked this question and giving this answer"?

MR. MacCRATE: Page 103.

THE WITNESS: Please repeat the question.

THE COURT: He hasn't even read it yet. He's coming to it in a minute.

All right, read the question, ask him do you recall being asked this question and making this answer, and then read the answer.

Q Mr. Willey, do you recall being asked this

question, and giving this answer at your deposition before trial:

"Q And in addition to offering forebearance and to find customers for chemicals, what other services were you offering at this time?

"A I believe no further. We had put together the book that we referred to previously, outlining the method by which this would be carried out. It was turned over to Dr. Fischbeck at his request and sent to Mr. Coan and accepted by him and we believed used as the basis for application."

MR. FARRELL: Your Honor, I object to that on the ground that the question in that case is not clear from what Mr. MacCrate has read.

THE COURT: As to what they are referring to?

MR. FARRELL: Yes. He said "you," and he doesn't explain what "you" meant.

THE COURT: Bring up the deposition and mark the page for identification, please.

(Exhibit D-325 was marked for identification.)

THE COURT: Can't this be resolved and save time? What's the story here?

MR. MARKS: I can't tell, your HOnor, because I don't have this volume handy. I can't see the context of

preceding page. May I have a moment?

THE COURT: Yes.

(At the side bar.)

MR. MARKS: I believe that the reference here is to Prudential, all the references, because they're always in the plural.

THE COUT: All these people like to talk in terms of the imperial "we." Now they pay the consequences.

MR. MARKS: He certainly didn't testify, your Honor, that he gave it. It is not inconsistent with his testimony.

THE COURT: That's for the jury, Mr. Marks. It may be inconsistent when these people start using this imperial "we" that we have heard throughout this trial.

Okay, I will permit him to be asked whether that deposition refreshes his recollection as to whether he gave it or caused it to ge given to Mr. Coan.

(In open court.)

Q Mr. Willey, do you recall giving that testimony at your examination before trial?

A I probably did. It has nothing to do with your previous question.

Q Did you send or cause to be sent to Mr. Coan a copy of the Prudential brochure, Plaintiff's Exhibit 215?

A I just answered you a minute ago and said I personally did not. Somebody did, but I personally did not and I never said so.

Q And when you used the expression "we" in answering that question, you were associating yourself with other people?

A Yes, sir; the company. That is the "we." You accepted that at the time and you shouldn't have, as the Judge has pointed out.

THE COURT: Oh, now, please, Mr.Willey, I'm going to strike out the last part of the witness' comments and direct the jury to disregard it.

THE WITNESS: I'm sorry, sir.

Q And when you said "we believed that Mr. Coan used it as the basis for application" --

MR. MARKS: Objection, your HOnor, that is not an accurate quotation. It doesn't say it was by Mr. Coan. It says "we believed used as the basis for application."

THE COURT: He may be asked whether that is what he meant.

A That is what I believed, yes.

Q That Mr. Coan had used the brochure as a basis for the application?

MR. FARRELL: Your Honor, that is misleading and I think it is deliberately so. I think that the witness should be shown the entire answer.

THE COURT: I can't waste a lot of time with this. Frame a new questionabout this brochure and let's find out what Mr. Willey knows about it.

Q Mr. Willey, what was your belief as to the use of this brochure by Mr. Coan?

A I certainly believed that it was used in the application for getting the quota from the government.

Q When did you learn for the first time that an application had been made by Phillips Petroleum Company to the Oil Import Appeals Board?

A After it was filedin 1964.

Q Do you recall when in 1964 it was filed?

A The early part. It was about two years that it took them to get the thing, so it was the early part of '64 and the latter part of '65 when it was allowed.

Q Now, from did you learn that the application had been made?

A I visited the Department of the Interior on more than one occasion and read these files, to try to follow it.

Q You visited the Department of the Interior

from time to time during what years?

A '64 and '65.

Q Both before and after you left Prudential as an officer?

A No. At the moment I think entirely after, because I was resident in Washington, D.C. when I did this.

Q Well, you resigned as president of Prudential Connecticut in June of 1964, did you not?

A Right.

Q And you at the same time sold all your stock in Prudential Connecticut?

A Right.

Q And you sold your stock to Mr. Shippee?

A Right.

Q And since that time you have not been a shareholder of Prudential Connectict nor any of the other Prudential companies?

A I didn't say that. Prudential had a public issue -- since you brought it up, Prudential had a public issue, and, that is the problem now. It is not J. Willey versus Edward Phillips; it is the 2,000 stockholders involved in this and I got involved in it because I bought some of that stock, and it was very popular. I tried to buy a thousand shares and I ended up with 200, which I sold again

after a while, so I have been a stockholder in a small way, along with 2, 000 other people, subsequent to my leaving the company.

Q Well, Mr. Willey, would you tell us in just what Prudential company you purchased stock?

A I don't recall. I never -- I didn't know one company from the other. It was only one when I left there and I paid no attention, because I felt and I still feel they're essentially all one company.

Q Well, you did know, when you were president of Prudential Connecticut, what company that was, did you not?

A Oh, certainly.

Q And that was just a small company at that time that went out of existence in May, June of 1965, was it not?

A No, sir. That's not the truth and the whole truth. It wasn't a small company that went out of existence, it wasn't a very small company and it didn't go out of existence ever. It changes its name and shifted from one state to another, but it never went out of existence as far as I'm concerned.

Q What have been the successive companies?

A I don't know. I have no knowledge of it.

Q And you have no idea what Prudential company you were a stockholder in in recent years?

A No, I don't know.

Q Were you ever a stockholder of Prudential New York, the plaintiff in this action?

A I don't know. Prudential just meant Prudential to me. I simply do not -- I thought it was all one company, and I don't know all the names.

Q You're a lawyer, are you not?

A I'm a lawyer, that's true, but I bought some stock and I made some money and didn't care about the name much.

Q And haven't you also, as an individual, made a personal claim with respect to this project?

MR. FARRELL: Objection, your Honor.

THE COURT: Overruled.

A I don't say I made a personal claim. There were a couple of letters back and forth. You see, you have got to know the whole picture; you can't take half the truth.

THE COURT: Don't make a speech. You either made a personal claim against the defendant in this case or you didn't. You're a lawyer, and certainly that much you can tell us.

A I made a suggestion that I might get something out of this, yes.

Q And that was a pesronal claim of yours, not a claim of any corporation?

MR. FARRELL: Objection, your Honor.

THE COURT: Overruled. Cross examination. Goes to intent.

MR. FARRELL: It is not what he said.

THE COURT: He can answer that's not what he said.

A It was a personal matter, yes.

Q And when did you first make such personal claim, Mr.Willey?

A I don't remember. There are letters in the file referring to it.

Q You do remember, do you not, that in January of 1965 there were conversations about such?

A Yes.

QA And those conversations were among what individuals?

A Well, the conversation after we left Mr. Learned's office, was with Bill Wright and he wanted some kind of a little piece of paper about a quarter interest for him, a quarter for me and Shippee, and a quarter for

Anderson , but that has been subsequently wiped out.

Q But at that time, Bill Wright wanted a piece of paper, quarter interest for you, a quarter interest for Robert Anderson, a quarter interest for himself, and a quarter interest for Mr. Shippee, is that it?

A Atthat point, yes.

Q And was he provided with this piece of paper?

A As far as I know, yes.

Q And you say that was wiped out?

A Correct.

Q Just at what point in time was it wiped out?

A I don't know exactly, but at one point I wrote a bill of complaint, took it to Robert Anderson. He said, "I want nothing to do with this. I don't want to be involved in this anymore. I don't want my name used. I'm not involved with this," so that wiped it out, at least by then.

Q Mr. Willey, I show you Defendant's Exhibit 324 for identification ,and ask you if that is the bill of complaint to which you have referred.

A I really couldn't tell you that. I don't know.

Q Well, would you examine it and see if it doesn't refresh your recollection as to whether that is the

bill of complaint you drew?

A The reason I can't answer that is right at the top it says "In the Supreme Court of New York, New York County" and I don't remember ever picking the court.

Q You indicated that you went back to Barrlesville after going there in January of 1965, did you not?

A Yes.

Q And you had a meeting with Mr. Learned?

A Right.

Q And you inidcated that that meeting took place on a particular day or just--

A I don't remember the day.

Q Well, I show you Defendant's Exhibit 324.

MR. FARRELL: Could I see that?

THE COURT: Don't you have a copy of that, Mr. Farell?

MR. FARRELL: I do, your HOnor.

THE COURT: Don't you want to get your witness back home? Let's move along. Get out your own copy. Let's go.

Frame the next question, Mr. MacCrate.

Q Mr. Willey, do you recall in the bill of complaint that you showed to Mr. Anderson stating a specific date on which you said that you had this meeting with Mr.

Learned?

A I don't recall that I used a date.

Q Do you have any record that would indicate the date to you?

A I think so. I think if you will look in the testimony you took from me over three days and over three years, you will find out that I first didn't know the date, then I think I looked at my expense account for one day I bought the airplane ticket and I put it in the testimony somewhere, I believe.

Q At this meeting with Mr. Learned, you were in Mr. Learned's office in Bartlesville, were you not?

A Yes.

Q Why didn't you just ask him; "Do we have a deal"?

A I don't know why I didn't ask him. I told you what I said to him and that was it.

Q What did you tell him, what did you say to him?

A I reviewed the situation and I said, "We're part of this deal." I just -- I said, "That wasn't clear from our first meeting. I came here to make it clear that we are part of this deal."

Q Well, what happened between January and March

that made you think you should go back and say something to Mr. Learned?

A Because it was worrying me that it hadn't been made crystal clear. I wanted to face him and make it absolutely clear, which I did the second time. We didn't do it the first time.

Q Well, as a lawyer, Mr. Willey, you thought you were making it crystal clear by saying, "We're part of this deal"?

A Yes, sir.

Q And those were your words, "We're part of this deal"?

A As near as I can remember, yes.

Q Could you identify what "this deal" is?

A yes, I did. Why, we went in great detail what we were talking about, the Puerto Rican deal, reviewing all the facts in it and the fact that he then had on file with the Department of the Interior an application for the quota.

Q But did you identify what part of the deal you were?

A No, I didn't. I felt -- the deal originally was that Bob Anderson was to help determine that when the quota was obtained. He was to be the man who -- go-between, between Phillips and ourselves, as to what part we'd get.

We didn't expect fifty percent. We were partners, though. We expected part of it.

Q Did you tell Mr. Learned at this meeting in March 1965, that Bob Anderson was to be a go-between between you and Mr. Learned?

A I don't recall that I did, no.

Q You didn't use the word "go-between," did you?

A No, I didn't, no, sir, I didn't.

Q Did you make reference to how your part of this deal was to be determined?

A No, I didn't.

Q Did you make any reference to its dimensions?

A No, I just said "we're part of the deal." I repeated the words to you several times, and that was it.

THE COURT: And he said nothing?

THE WITNESS: He said nothing, that's correct, sir.

THE COURT: And how many people were present in this meeting besides you and he?

THE WITNESS: Absolutely the two of us. He sent everybody out. There was another man there, he sent him out. The two of us sat alone with the door closed.

THE COURT: And you didn't say to him, "Aren't

you going to answer me?"

THE WITNESS: No, I did not. I kept looking for an answer, and I didn't get an answer, but I really felt that he was considering it, that he didn't say no, that he made no objection to anything I said, and I felt he was an honorable business man, and he would have said there, "Well, you're not partof the deal," which someone in Phillips said later, after they got the terribly important thing which was pending then.

THE COURT: All right.

Q Did you ask him one question, just one question?

A I don't recall.

Q You can't identify any question that you asked of Mr. Learned that he failed to answer?

A I don't recall any.

Q Now, you say this was before they got the quota, is that correct?

A It was about halfway in the middle, and they were having, according to the record, trouble, because the other industry was opposing the heck out of this thing. The industry was opposing this, saying, "Don't give that to Phillips. Why should they be favored?"

Q Was this before or after the public announcement

in February of 1965 by the Secretary of the Interior?

A If there was an announcement at that date, it was therefore after.

Q So that you were aware, were you not, at that time, from the public announcement, that Phillips was in the process of negotiating a contract with thePuerto Rican government, weren't you?

A If that was public, and I don't recall it, but it is very possible.

THE COURT: Have we fixed the date of this face-to-face meeting with Mr. Learned where he didn't say anything?

MR. FARRELL: March, your Honor.

THE COURT: Of '63?

MR. FARREL: March of 1965.

THE COURT: '65, I beg your pardon.

MR. MacCRATE: Your Honor, I have been looking for a piece of paper that I can't put my hand on for the minute that gives the specific date in March.

THE COURT: In his deposition?

MR. MacCRATE: It was in connection with his deposition.

THE COURT: All right. If that is found on Monday, you can read that into the record.

Q Now, you said you had a piece of paper with you at that meeting with Mr. Learned?

A yes.

Q Was it more than one sheet of paper?

A It was brief. It may have been two, not more.

Q By whom was it prepared?

A It was sent to me from Prudential's office. I don't know who prepared it for sure.

Q And what did it purport to be?

A IT was a review of what had gone on, as I recall. I haven't read it since. As I best recall it was a review of our position, what Prudential had done since the project was first turned down by Phillips.

(Exhibit D-326 was marked for identification.)

MR. FARRELL: What is the date, Mr. MacCrate?

MR. MacCRATE: There is no date on the document.

Q Mr. Willey, the document that you had with you when you spoke to Mr. Learned, you have not seen since that time?

A No.

Q What did you do with it at that time?

A I just don't recall. I either sent it back to Prudential or I had it in my files and lost it. I tried

to find it a while ago. I don't have it.

Q I show you Defendant's Exhibit 326 for identification, and ask you if that is a copy of the memroandum that you had at the time of your meeting with Mr. Learned.

A I believe this is, yes.

Q And do you know who prepared that document?

A It has the typed name Shippee on it. It is not signed by Shippee so I am not sure.

Q Can you make out these initials over to the left indicating the person who typed the document?

A It looks like "PM". That is Pat Morel who was I believe secretary of the company.

Q She was his secretary at that time?

A I think so.

MR. FARRELL: Our company has an attachment. Is it on your copy?

MR. MacCRATE: No.

THE COURT: So fa , gentlemen, the document hasn't been offered. Let us move along.

Q Mr. Willey, you believe that Defendant's Exhibit 326 is the document that you had with you when you spoke to Mr. Learned?

A I believe so.

Q Did you read from that document to Mr. Learned?

A No, I did not. I handed it to him and he looked it over briefly and handed it back to me.

Q Was there anything attached to the memorandum when you handed it to Mr. Learned?

A I don't know.

Q Was there any reference in your conversation to Mr. Learned's letter of November 1963?

A Yes, I think perhaps --

MR. FARRELL: I think Mr. MacCrate misspoke.

MR. MacCRATE: November 1962, thank you.

A I think perhaps to jog his memory I did have that letter along with me too to show him the letter he signed. I believe that is correct. It may have been attached to that or not.

Q At your meeting in January of 1965 was there any reference to the letter of November 13, 1962?

A I'don't recall that there was. I don't recall.

Q So it is your testimony that you went back in March and took a memorandum with you and took a copy of Mr. Learned's letter to Prudential Connecticut of November 1962?

A That is basically correct.

Q And you handed him the memorandum and then waited while he read it?

A He read it rather quickly. I don't know if he really read it but looked it over and thumbed through it and handed it back to me.

Q How did you handle the letter of Noveber 13,

1962?

A I don't know. I think at the moment maybe it was attached, the one piece of paper. I thought he would keep it but he didn't, he handed the whole thing back. But I of course reminded him we had been involved with him and reminded him of this previous letter.

Q But you asked him for nothing at that time?

A I only came to state that we were still in this, we were interested, we were co-venturers with him -- I don't know if I used that exact word -- but still in the deal and there was no question about what I said.

There was no question about his answer, which wasn't anything.

Q But you never told him what the deal was in that conversation? You never said "This was the deal?"

A Well, yes, to the extent that I told him we were talking about the Puerto Rican deal and the application for an import quota, yes, sir.

Q We have been talking about the early part of 1965 where you had this personal interest of 25 per cent confirmed and the other three principals similarly had their interest confirmed.

You had indicated there came a time when that changed. Will you tell us when that was?

A I can't tell you precisely. At least one thing clearly changed. That was Mr. Anderson thereafter his lieutenant, Mr. Wright, dropping out. And then there was, as time went on, and I don't know just what --

Q Can you fix approximately, Mr. Willey, when Mr. Anderson and Mr. Wright dropped out?

A Certainly by the time the import quota was obtained and Phillips said we don't have anything to do with you fellows and I got indignant about that and I brought up the bill of complaint and went to Mr. Anderson and he said, "I don't want anything to do with this litigation."

So I said, "Well, you are out." I said or Shippee said -- we cut him out.

Q Does it refresh your recollection that the oil import quota was acted upon in December of 1965?

A Yes, that would be certainly approximately correct, yes.

Q Was it before or after December 1965 that Mr. Anderson and Mr. Wright withdrew from this arrangement?

A As far as I recall I could be wrong but as far as I recall it was after. When we started to talk about litigation they didn't want any.

Q Did you at that time ask them to make any assign-

ment to you of their interest in this arrangement?

A No, because they didn't any assignment either. It was just a little piece of paper and I didn't think it was an assignment and they didn't reassign anything. They just quit.

Q This interest was reflected, was it not, on a piece of paper over the signature of Mr. Shippee?

A Yes, it was.

Q Was any step taken in the first half of 1966 to cancel that statement, that signed statement of Mr. Shippee?

MR. FARRELL: Objection.

THE COURT: If he knows if any steps were taken. It is cross-examination and it can be asked.

A Only oral. If there was any signed piece of paper, the answer as far as I know is there wasn't.

Q Was there a signed piece of paper at any subsequent time of which you were aware that was given either to Mr. Wright or to Mr. Anderson in this regard?

A No, I know of no signed piece of paper. I know Mr. Anderson's firm statement that he wanted noth ing to do with the litigation.

Q So that the last signed piece of paper with respect to Mr. Anderson and Mr. Wright's interest that

was delivered to them as far as you were aware is the one in January of 1965?

MR. FARRELL: Your Honor, I object to this line. This document which he refers to is not in the assignment.

THE COURT: You will have a chance to have redirect examination. This witness is being cross-examined and he may answer if he knows.

A I keep repeating that as far as I know there wasn't any assignment by Mr. Anderson.

Q Was there another piece of paper that you were aware of that went either to Mr. Wright or to Mr. Anderson respecting this interest?

A Not that I know of.

THE COURT: Does that first piece of paper have a number in this case?

MR. MacCRATE: Yes, your Honor.

THE COURT: Let us move along, please.

I don't mean to interrupt the cross-examination. I don't have to have the paper now.

Q After July 1963 and up to December of 1963, was there anything, Mr. Willey, that you did with respect to any Puerto Rican project?

A I don't specifically recall. I was always constantly on the lookout for satellite plants but how

much I did I don't recall.

Q Those were very busy months for you, were they not, the second half of 1963?

A They were while Mr. Shippee was convalescing, yes.

Q You in effect were handling the affairs of Prudential Connecticut single-handledly?

A Well, I don't know as I would say that. Mr. Shippee's umph was gone but he still came to the office.

Q Didn't you testify in your examination before trial that virtually single-handedly you were running the business during that period?

A The business of being treasurer and handling the checks and payrolls and all that sort of thing, the many details, yes, I did.

Q Did you not also testify that Mr. Shippee was unavailable in the office during that period?

A I did not.

Q Did you at your examination before trial give the following answer at page 250, line 18 to my question to you:

"Q You have indicated, Mr. Willey, that during the second half of 1963 as a result of an

aircraft accident Mr. Shippee was unavailable in the offices of Prudential for a period of time. Did you during that period have occasion to visit with Mr. Shippee?

"A Yes, I did. I visited him at his house."

Did you give that testimony at that time?

A That is correct.

MR. FARRELL: Your Honor, I object to this because what Mr. MacCrate said was he wanted to show an inconsistent statement. What he did read was a question which has the statement which was inconsistent with the witness' testimony, read that question to the jury and then asked Mr. Willey if he gave that testimony, that question.

THE COURT: The answer has to be read too.

I am looking for the page and I can't find it in my copy of the deposition.

MR. MacCRATE: 250?

THE COURT: I don't have that but the way these depositions are to be used, if there is any dispute about it, simply ask the witness do you recall this question and read the question and then do you recall giving this answer and give the answer and that may be done.

Q For what period of time, Mr. Willey, was Mr. Shippee unavailable during the second half -- in the office -- during the second half of 1963?

A I can't tell you exactly but like say six weeks in the office. Then he came in part-time.

Q Was this question asked of you and did you give this answer, reading page 289 and 290:

"Q Isn't it the fact that you and Mr. Shippee had been pretty much out of touch with what Phillips was doing in the course of the fall of 1963?

"A There was, yes. We had to an extent because this was the time as I have told you before when Mr. Shippee was, I would say for six months, in a state of semi-shock and was not his old self.

"Q Wasn't this one of the first communications that Mr. Shippee directed to anyone about this matter in the period of six months?

"A It may have been but we were all the time relying upon Mr. Anderson to keep this thing in line which he did until the quota was issued."

Do you recall that?

A I think that is correct yes.

Q Can you identify the communication to which

reference is made in that question, which did not appear in that particular question?

A No, there is some communication but I don't recall it.

Q Do you recall a letter in December of 1963 that Mr. Shippee said to Mr. Anderson inquring as to what was going on and referring to the fact that he had heard some information --

MR. FARRELL: I object to the form of the question.

THE COURT: I will allow it.

A I have a recollection of that letter, yes.

THE COURT: Will counsel approach the side bar?

(Discussion at the side bar off the record.)

(In open court.)

MR. MacCRATE: I suggest that we recess at this time.

THE COURT: Very well.

Just a minute, please.

MR. FARRELL: Can we have a minute while the jury is here?

Prior to the luncheon recess we reached a stipulation on Exhibit 219 and I would just like to read

that in at this time.

THE COURT: Yes, I will permit you to do that.

Just one moment, please.

Starting time on Monday is 10.30 in the morning and as soon as we state a stipulation of the attorneys on the record, then we are going to break for the day.

I wish you all a pleasant weekend.

Just stand by a moment and we will have the stipulation.

Please return Monday morning, Mr. Willey.

MR. FARRELL: It has been stipulated that Plaintiff's Exhibit 219 was found in the files of the New York office of Phillips Petroleum in 1967 and was produced thereafter by Mr. MacCrate and his firm during the course of litigation in May 1973.

THE COURT: You mean delivered to you?

MR. FARRELL: To me or my office.

THE COURT: All right.

So stipulated?

MR. MacCRATE: As to the delivery date, I didn't realize that was going to be part ofthe stipulation.

THE COURT: Delivered at some date?

MR. MacCRATE: Delivered by us at some date.

THE COURT: After this lawsuit began?

MR. MacCRATE: Yes.

THE COURT: So stipulated.

MR. FARRELL: I will offer it.

MR. MacCRATE: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 219 for identification was received in evidence.)

THE COURT: Anything else today, gentlemen?

I will excuse the jury at this time.

(Jury left the courtroom.)

(Adjourned to Monday, January 12, 1976, at 10.30 a.m.)

PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

New York, January 12, 1976;
10.45 o'clock a.m.

(Trial resumed.)

- -

(Jury present.)

E D W A R D J. W I L L E Y , resumed.

THE COURT: Mr. MacCrate, you may continue the cross-examination.

CROSS EXAMINATION (Continued)

BY MR. MacCRATE:

Q Mr. Willey, your testimony on Friday you referred to having some ten drafts of the brochure. Can you tell me over what period of time that you had that many drafts?

A Beginning some time in I suppose the end of October or the 1st of November we began to work on it and it went on I believe up into 1963 and I can't tell you just when.

Q Well, when you referred to ten drafts do you mean you went from start to finish in ten different drafts

or are you talking about changing one page or one paragraph?

A Changing --not ten complete books, no.

Q So your reference to ten drafts was just to individual changes that you made here and there?

A That is correct.

Q I show you Plaintiff's Exhibit 214 and call your attention to the fifth page of the report in brief and the handwritten notation that had been made there.

Did you participate in the change that appears on that page?

A I don't recall that I did. I remember the 53 per cent but I don't know that I had anything to do with this particular wording.

Q What is the language that has been crossed out?

A It says petrochemical volume is and crossed out, estimated to be approximately 20 per cent petrochemicals.

Q Prior to the revision it was provided that -- an estimate was provided of the sales volume of petrochemicals of 20 per cent, is that correct?

MR. FARRELL: I object to this. That book is in evidence and speaks for itself.

THE COURT: I will allow it as a preliminary

question just to save time.

A It speaks for itself if that is it. Just as I got through saying, that at some point there was an estimate of 20 per cent and somebody asked 70 and we now know that it couldn't be accomplished and we got to 53 per cent.

Q Is it your testimony that 53 per cent were to be petrochemicals?

A I have somewhat of a memory that 53 per cent would be the ultimate over the period of years that you could ever reach.

Q Isn't it a fact that the 53 per cent there is a combination of petrochemicals and what you were going to try and keep outside the quota?

MR. FARRELL: Objection.

THE COURT: If he knows he may be examined.

A I am sorry, I don't understand the question. I heard it.

THE COURT: Frame another question.

Q Does it refer to the same thing as the 20 per cent that has been crossed out?

A It doesn't say the same thing, no. It says 53 per cent were to be chemicals and "non" petrochemicals falls into the 53 per cent would possibly be used including

fuels.

In the petrochemical processes a lot of material is going to be burned up, used for heat.

THE COURT: To run the refinery?

THE WITNESS: No, for the chemical plants.

THE COURT: The satellite plants?

THE WITNESS: The satellite plants would use 53 per cent hopefully some day. I can't tell you. I don't remember clearly enough what you are talking about. It may be fuel for the refinery also. In other words, basically 47 per cent would be gasoline materials that would not be used in the petrochemical plant, shifted to the United States and hopefully 53 per cent would be used up mostly in petrochemicals.

Q Isn't it a fact that in this very brochure it is provided that there will be no more than 28 per cent petrochemicals?

A I don't recall that.

Q I call your attention to the fourth page of Chapter 4 and to the insert that appears at that point. I asked you if that doesn't refresh your recollection?

A I can only say at one time there was an estimate of 28 per cent to be used for petrochemicals.

Q To be comprised of wax feedstocks of 10 per

cent and other petrochemicals of L8 per cent, is that correct?

A That is what it says here, yes. I am not clear on it.

Q And 25 per cent was to be for fuels to the military and Mona passage of vesels in order to keep it out of the quota, isn't that the proposal?

A Not to keep it out. I don't understand keep it out of the quota. No, to keep it from going back to the United States. It says 47 per cent here and I didn't say it, I am only reading from this.

I am not testifying to this really because I don't have this memory of that piece of paper.

Q Isn't it a fact that is what appeared in the final brochure?

MR. MacCRATE: I am showing the witness Plaintiff's 215.

A Well, it is certainly here. This thing Tom Young worked on mostly. I didn't write these figures and they are here in the brochure that went to the Department of the Interior apparently.

(Continued on next page.)

Q Were you ever told that 28 percent for petrochemicals was unsatisfactory to EDA?

A No, but I can easily understand why they might ask for more, and I think I heard the figure 70 percent somewhere, which is an impossible figure.

Q You never heard that EDA was dissatisfied with a provision for 28 percent petrochemicals?

A Not to my memory.

Q You have no recollection one way or the other?

A Well, I read some of the record of the -- I'm sorry.

EDA -- you're talking about the Puerto Ricans, not the Department of Interior. The Puerto Ricans may have objected. They wanted all the use they could get out of the material that was coming into Puerto Rico, but I don't know that they specifically objected to 28 percent.

Q Now, with respect to Plaintiff's Exhibit 224B, is there any reference there to only 28 percent petrochemicals?

A I can't read it back there.

MR. FARRELL: Your Honor, I think this is a waste of time. There is no reference to any percentage.

THE COURT: Well, the exhibit is in evidence

and this witness has already told us that he did not write the percentage figures as I understood it, is that correct?

THE WITNESS: There is no percentage figure here. I didn't write that, and I didn't write this.

THE COURT: All right. I think in that situation it would be a waste of time; if he didn't do it and doesn't know about it.

Your understanding is Mr. Young wrote it?

THE WITNESS: The percentage figures I would think came -- my best recollection -- would have come from Mr. Young, because he was doing that sort of technical material.

THE COURT: All right.

MR. MacCRATE: D327 for identification.

(Exhibit D-327 was marked, for identification.)

Q MR. Willey, in the spring of 1963 did you have anything to do with the reproduction of copies of P-215?

A No.

Q Did you have anything to do with making payment for reproduction services?

A I don't recall that I did. No.

Q I show you Defendant's Exhibit 327 for identification, and ask you if that does not refresh your

recollection.

MR. FARRELL: Your Honor, I object to this.

THE COURT: Overruled.

MR. FARRELL: This is not on the pretrial --

THE COURT: No speeches. You can re-examine him later on. If the document is offered, you may have voir dire examination.

A Well, this is a bill for --

THE COURT: He is just asking you whether it refreshes your recollection and your answer is yes, it does refresh, or it doesn't.

A No, I don't remember this invoice.

Q Well, in addition to the invoice, Mr. Willey, I ask you to look at the second page, and ask you if that refreshes your recollection.

A It is a check with my signature on, but I wrote thousands of them and I don't remember this one.

Q I ask you to look at the next page. Does that refresh your recollection?

A No. It's one of thousands of entries. I just don't happen to remember it. It's a small detail.

Q And I particularly call your attention to the stub information for check #1135. Does that refresh your recollection?

A No, it's too small for me to remember.

Q Then I call your attention to the last page and ask you if that refreshes your recollection.

A No, I don't remember this particular sheet of paper.

Q Well, did you, in 1963, make payment of that invoice?

A Yes ,I did.

MR. MacCRATE: I offer the exhibit in evidence.

MR. FARRELL: Objection, your Honor.

THE COURT: I will have to take the objection at the side bar.

(At the side bar.)

MR. FARRELL: Your Honor, these are four documents which Mr. MacCrate has stapled together, with no indication that they were at any time together in that fashion.

THE COURT: I understand they are photostats of something.

MR. FARRELL: But there is no indication that, for example, page 4 was attached at any time to page 1.

THE COURT: All right. I think that is clear, it was never attached to page 1.

MR. MacCRATE: Your Honor --

THE COURT: Do you want to separate them?

MR. MacCRATE: Your Honor, these documents were produced from the defendant's files . This witness was interrogated about these documents, on its pretrial deposition, and the identification numbers that were placed on them at that time are reflected, running 142, 142A, B, and C.

THE COURT: Well, I will direct that the last page be removed, and I will overrule the objection to the rest of it. The last page can be re-marked as Exhibit 327A in the absence of a showing that the last page was in the checkbook or that it was attached to the invoice which constitutes the first page of D-327.

(In open court.)

THE COURT: I will receive 327 in evidence with respect to four pages only. The fifth page shall be detached and marked 327A for identification.

(Exhibit D-327 was received in evidence.)

(Exhibit D-327A was marked for identification.)

Q Mr. Willey, I show you Defendant's Exhibit 327A for identification, and ask you if that was in the files of Prudential, attached to the invoice of Accra Stenographic Services, which has just been marked as Defendant's Exhibit

327?

A After thirteen years, I don't remember it, no.

MR. MacCRATE: May I read the invoice at this time, your Honor?

THE COURT: Yes, certainly.

(Mr. MacCrate read from Defendant's Exhibit 327 in evidence, to the jury.)

Q MR. Willey, in May or June 1963, did you talk with Mr. Shippee about having 25 sets made of Plaintiff's Exhibit 215?

A I don't recall. No.

Q Do you recall anything about the reproduction of copies of Plaintiff's Exhibit 215?

A No, I don't. I don't believe I had anything to do with it except obviously I paid the bill.

Q Mr. Willey, do you recall Jack Coan sustaining a physical injury in an automobile accident?

A I don't remember it, no.

Q You have no recollection of a scar on his forehead due to an accident that he sustained?

A No.

Q Did Mr. Coan, in or about March or April of 1963, tell you about approaches by him to Atlantic Refining or Socony Mobile or of Sun Oil?

A I can't remember the names of those companies, and I don't know when he approached companies, but he had approached oil companies, that I do know.

Q I show you D-131, D-132 and D-133, and ask you if that refreshes your recollection.

A I never saw these letters.

Q Does it refresh your recollection --

THE COURT: Before today you never saw them?

THE WITNESS: No, sir.

THE COURT: Go ahead.

Q Does it refresh your recollection as to any conversation that you had with Mr. Coan in March or April 1963, regarding an approach to Atlantic Richfield or to Socony Mobile or to the Sun Oil Company?

A I don't really remember it, no.

Q Do you have any recollection of it?

A I told you before that I understood he approached some oil companies. That's all I can remember.

Q Did he mention that he was talking with John Gibbs at that time about this?

A I never heard of John Gibbs that I can recall.

Q Did you have any conversation with Mr. Coan in the spring of 1963 about the possibility of getting

additional participants to work with you in connection with the project in Puerto Rico?

A Only petrochemical participants, that is all I recall, about having specific conversations.

Q And this is in the spring of 1963, you were not talking about anything other than additional petrochemical participants?

A No, I thought we, with the assistance of a good friend, had picked out our partner.

Q Did there come a time in May of 1963 when Brown & Root returned some papers to Prudential?

A It's possible, but I sure don't remember it.

Q Well, Brown & Root was an engineering firm, was it not?

A That's right.

Q Did you have any dealings with Brown & Root yourself?

A Not personally, no.

Q Had they been provided with some information about what you were doing at that time?

A As best I know they were, but I didnot negotiate with them. I didn't talk to them.

Q I show you P-109, and P-110, and ask you if this doesn't refresh your recollection as to a return of

papers by Brown & Root?

A No, it doesn't refresh my recollection.

Q You had no information at that time about the return of papers from Brown & Root?

A I don't recall it, no.

MR. MacCRATE: Mr. Farrell, I assume that you have not yet offered in evidence P-109 and P-110, is that correct?

MR. FARRELL: I don't recall off hand, but I don't remember offering them. If you want me to check, I will.

THE COURT: The clerk will inform us. My understanding is they have not yet been offered.

MR. FARRELL: That is my understanding.

THE CLERK: They have not.

Q Mr. Willey, there has been testimony --

THE COURT: Excuse me, are we settled on these exhibits? Do you want to offer them as defendant's exhibits or what is to be done with them?

MR. MacCRATE: Yes, your Honor, if the plaintiff does not wish at this time, I will offer them.

THE COURT: He can't offer an exhibit while you're examining.

MR. FARRELL: I have no objection.

THE COURT: Do you want them renumbered?

MR. MacCRATE: If he will accept them in evidence as currently numbered, I will offer them.

THE COURT: All right. I will permit you to do that if that is agreeable.

MR. FARRELL: That is agreeable, your Honor.

THE COURT: Very well.

(Exhibits P-109 and P-110 were received in evidence.)

MR. MacCRATE: Plaintiff's Exhibit 109 is a letter of Brown & Root.

(Exhibit read.)

(Plaintiff's Exhibit 110 read.)

Q Mr. Willey, did you understand that what Mr. Shippee sent to Mr.Chapman at the end of May was a brochure in its final form ready for submission to the Oil Import Board?

A It was in the final form as of that date but it may have been amended again up to July.

Q Well, did you understand that Mr. Shippee was sending something to Mr. Chapman that he wanted Mr. Chapman then and there to file with the Oil Import Board?

A I believe that is correct.

Q Do you know of any changes that were made in that brochure after May 29, 1963?

A I don't.

Q Do you know of any contribution whatsoever that Brown & Root made to that brochure?

A I don't recall.

Q Were you invited to the proposed meeting on July 2, 1963?

A I don't recall that either.

Q Do you recall any invitation list for such a

meeting?

A I don't recall an invitation list, no.

Q Do you know who was arranging the meeting?

A I believe Mr. Shippee.

Q Did Mr. Shippee tell you who he was inviting to the meeting?

A No.

MR. MacCRATE: I ask that this document be marked D-330 for identification.

(Defendant's Exhibit 330 was marked for identification.)

Q Mr. Willey, I show you Defendant's Exhibit 330 for identification and ask you if that refreshes your recollection as to those who were invited to the meeting scheduled for July 2 in the office of Robert Anderson?

A No, it doesn't.

Q Did that meeting ever in fact take place?

A I can't answer that. I only know the results of the meeting and what day it was I don't know, which Mr. Chapman was going to be the man who was going to represent the case in Washington. That was the net result but I don't know whether the meeting took place or when. I don't know.

Q Did the meeting take place before or after

Mr. Shippee's unfortunate aircraft crash?

A I don't know. We had an office in Connecticut and I was in the Connecticut office the day of the crash. That is the only thing I can clearly remember. But where I was the other days, I don't know.

Q Had there been a meeting prior to that time in Mr. Anderson's office?

A I don't know.

THE COURT: Prior to that meeting prior to the crash?

MR. MacCRATE: Prior to the crash.

Q Did you understand the question?

A I understood the question.

MR. MacCRATE: May I have this marked for identification.

(Defendant's Exhibit 331 was marked for identification.)

MR. FARRELL: Are you introducing Defendant's Exhibit 330?

MR. MacCRATE: I had not at this moment.

Q Mr. Willey, I show you Defendant's Exhibit 331 for identification and ask you if that refreshes your recollection as to the cancelation of the meeting on July 2?

MR. FARRELL: I object to the form of the ques-

tion. There is no evidence that the meeting had been canceled.

THE COURT: He said he didn't know whether it was held or not.

MR. FARRELL: That doesn't mean it was canceled.

THE COURT: I will permit him to be asked whether the paper refreshed his recollection as to whether or not the meeting was held.

A I just don't recall this.

Q You don't recall the docuemnt or you don't recall the event?

A I don't recall the event. There was a meeting some time in the early part of July. It is a good thing I didn't say it was before the accicent because I don't know. If I said it was before the accident you would have caught me but I didn't.

THE COURT: Never mind about what would have happened, just answer the questions.

THE WITNESS: Thank you.

Q Mr. Willey, I show you Plaintiff's Exhibit 138 which has been marked in evidence and is a copy of a letter dated December 19, 1963 from MR. Shippee to Mr. Anderson.

Do you know of any activity of Mr. Shippee's in relation to Mr. Anderson and the Puerto Rican project

other than that one letter between July 2, 1963 and May of 1964?

A I have a general recollection that some satellite plants were acted on. We felt the rest of the thing was all settled in July, all finished, nothing else to do. Basically an import quota which was the key to the whole thing. Beyond that we talked about satellites and I can't remember exactly what was done. Talked about satellites right through 1965 when we visited Mr. Learned.

Q When did you start talking about satellites, Mr. Willey?

A In November 1 of 1962 as I recall.

Q You were having generalized discussions right through the second half of 1963 and the first half of 1964, is that your testimony?

A There was so much discussion of satellites right through 1965 that I can't place precisely what happened but we were all concerned about getting enough satellites in there.

Q Do you recall a proposal to organize a subsidiary corporation of Prudential Connecticut?

A There have been several subsidiaries. Do you mean one specific one?

Q During this period in 1963 and 1964.

A Somewhere in that time they talked about Prudential itself in a decision to become involved, to also have satellite plants, yes.

Q Can you relate that to the time of your retirement as president of Prudential Connecticut in June of 1964?

A No, because while I retired as president I was active in this thing right up until the case was filed.

Q Isn't it a fact that the proposal for Prudential Polymer was made in the summer of 1964, a full year after the crash?

A It could be, it is possible. I don't recall the date.

Q Isn't it a fact that the first activity of Mr. Shippee after this letter of December to Mr. Anderson was when he read a newspaper clipping in May of 1964 and sent a letter of congratulations to Oscar Chapman? Do you know of anything else during that entire period in July to May that Mr. Shippee did that you can tell us today?

MR. FARRELL: I object to this as repetitive. The question was asked and answered.

THE COURT: I don't know that it is repetitive but I will let him answer it.

A I can't specifically tell you what happened.

You best ask Mr. Shippee.

Q Do you recall in June of 1964 Mr. Coan making the suggestion that perhaps you ought to do something because the Phillips project was moving forward and was to be presented in open hearing?

A I don't recall that.

Q I show you Plaintiff's Exhibit 149 and ask you if that doesn't refresh your recollection about a suggestion from Mr. Coan?

A No, I don't remember this letter of the subject matter of it.

Q I believe you testified that you could not recall the time when Prudential Polymer as proopsed to be organized?

A I did.

MR. MacCRATE: Will you mark this for identification, please.

(Defendant's Exhibit 332 was marked for identification.)

Q I show you Defendant's Exhibit 332 for identification and ask you if that refreshes your recollection as to the time that it was proposed to incorporate Prudential Polymer Company in Puerto Rico?

A No, it doesn't.

Q Have you ever seen the letter before, Mr. Willey?

A I don't recall that I have.

Q Did Mr. Shippee discuss with you arranging for the incorporation of the company?

A No, I was not serving as counsel in the corporation department at that time.

Q Well, in any capacity did he discuss this with you?

A I just said no.

Q Were you aware that there was an incorporation of Prudential Polymer?

A No.

MR. MacCRATE: Will you mark this for identification, please.

(Defendant's Exhibit 333 was marked for identification.)

Q Mr. Willey, did there come a time in the fall of 1964 when you informed Mr. Anderson regarding plans for Prudential Polymer?

A I don't recall it.

Q Do you recall seeing a memorandum at that time relating to a proposal for Prudential Polymer Company, Puerto Rico?

A I don't recall it.

Q I show you Defendant's Exhibit 333 for identification and ask you whether that refreshes your recollection as to a proposal communicated to Mr. Anderson in the fall of 1964?

A I do recall that Prudential proposed a polyvinyl chloride plant as a satellite. That is all I can recall.

(Continued on next page.)

Q Isn't that proposal something that you discussed in Bartlesville with Mr. Learned in January of 1965?

A Yes.

Q When you went there with Mr. Wright and with Mr. Shippee?

A Yes.

Q And prior to that time had you not reviewed your proposal with Mr. Anderson?

A Reviewed what proposal?

Q The proposal for a polyvinylchloride or PVC plant in Puerto Rico.

A I don't recall.

Q Were you ever informed of any communication that was sent to Mr. Anderson regarding the PVO proposal before you went to Bartlesville in January of 1965?

A No.

Q Did Mr. Shippee inform you at any time that he had reviewed the matter with Mr. Anderson?

A No.

Q Did Mr. Wright indicate that he had reviewed the matter with Mr. Anderson?

A No.

Q Was there any reference to Mr. Anderson in connection with arranging for the trip in January of 1965?

A He didn't arrange for the trip.

Q Was there any reference to Mr. Anderson in your planning for that trip in January of 1965?

A Not on my planning, no.

THE COURT: I'm not sure I understand the question, Mr. MacCrate.

Q Who made the plans for the trip to Bartlesville?

A As far as I know, Bill Wright did.

Q Did you have any conversation with Mr. Wright before you went to Bartlesville?

A Oh, I had conversations, yes. About what?

Q Did you have any conversations with him about what you were going to do in Bartlesville?

A I may have. I can't say it specifically.

Q Did you discuss with Mr. Wright before you went what you were going to say to Mr. Learned or to anyone at Phillips with whom you spoke?

A Yes. We reviewed in general that we were involved in the deal and we wanted to reiterate that to Mr. Learned and we also talked about one satellite plant and Phillips had some and we had one, proposed.

Q And in your discussion with Mr. Wright at that time, did you ask him what Mr. Anderson's view was of this

proposal.

A I didn't.

Q Did he volunteer what Mr. Anderson's view was?

A No, he did not

Q Did Mr. Shippee at that time indicate what Mr. Anderson had said about the proposal?

A No, not that I recall.

(Exhibit D-334 marked for identification.)

Q After your first meeting in the company of Mr. Shippee and Mr. Wright, you, Mr. Willey, returned to Bartlesville shortly thereafter, is that correct?

A Yes.

Q And you figure that return trip as some time in March of 1965?

A To the best of my ability to recall it, yes.

Q Were you aware at the time you went on this second trip that Mr. Learned had written a letter to Mr. Shippee regarding the PVC proposal?

A No.

Q I show you Defendant's Exhibit 334, and ask you if that refreshes your recollection.

A No, I don't recall it.

Q In your conversation with Mr. Learned, was anything said about a PVC plant?

A I don't recall that I mentioned it. It may have been involved in a memo that I had with me, but I did not discuss a PVC plant, no.

Q Mr. Willey, I show you a copy of D-324 for identification and ask you to examine on page 18 the paragraph at the top of the page and invite your attention to the date that appears on the seventh and eighth lines, and ask you, did you provide the information that appears in that paragraph with respect to that date?

A I believe I did.

Q And what was the information that you provided in that regard?

A I believe in order to establish a date of March 26th as my visit --

Q March --

A 24th, sorry, as the date of my visit, that I had reviewed my expense account and found that to be the date.

Q This was in connection with the preparation of a draft complaint against Phillips?

A Yes.

Q And this was in the spring of 1966?

A Yes.

Q And is it your testimony that you met with

Mr. Learned on March 24, 1965, at Bartlesville?

MR. FARRELL: I object to that, your Honor. That is not his testimony.

THE COURT: If it isn't his testimony, he can certainly say so, can't he? Is that presently your best recollection, that that's when you met with him?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Mr. Willey, I show you Defendant's Exhibit 326, which you have previously identified as a memorandum that you showed to Mr. Learned in March of 1965, is that correct?

A I believe that is correct.

Q Now, before taking that memorandum to Bartlesville with you, did you satisfy yourself as to its accuracy?

A I can't say that I did. I received it, as I recall, just about the day I was leaving from New York, and I don't recall that I checked the accuracy of it. I don't recall that.

Q Well, did you review it with Mr. Shippee before you presented it to Mr. Learned?

A I did not.

Q Were you representing that that memorandum contained facts that you wanted Mr. Learned to understand?

A Not necessarily. I had received it from Prudential, and I thought it gave the outline, and I handed it to Mr. Learned.

Q Well, it represents that Oscar Chapman approached Prudential in 1961, doesn't it?

A That is an error. That's the wrong date.

Q And it represented that Warburg had left the group when Anderson asked for a back to back letter from Phillips; isn't that what it represents?

A I'd have to read it.

MR. FARRELL: It is not what it represents.

THE COURT: It is in evidence.

MR. FARRELL: No.

THE COURT: Well it shouldn't be placed in evidence indirectly. He may be asked whether he directly or through use of the memorandum informed Mr. Learned of a specific fact. He may be cross examined in that fashion.

As I understand it, he says he showed this -- memorandum to Mr. Learned?

MR. FARRELL: That's correct, your Honor.

MR. MacCRATE: Your Honor, I offer in evidence at this time Defendant's Exhibit 326 for identification.

MR. FARRELL: No objection, your Honor.

THE COURT: It is received in evidence. I take

it unless I'm otherwise advised by counsel, that there is no requirement that any document be renumbered?

MR. FARRELL: That's correct, your Honor.

THE COURT: And I will say to the jury that any document which is in evidence, is in evidence, no-matter who offered it. All right.

(Exhibit D-326 was received in evidence.)

THE COURT: As soon as you finish with this document, we will take a brief recess.

Q Is it not represented in that document by you and Mr. Shippee that Warburg & Co. had left your group before Mr. Learned was approached by Mr. Anderson?

MR. FARRELL: Objection, your Honor.

THE COURT: Well, it's in evidence. It speaks for itself, and counsel may read it, and then he may ask the witness anything concerning any statement therein contained.

I am sustaining the objection, Mr. MacCrate, but you may read the letter or the memorandum, rather.

A It says here that --

THE COURT: Never mind. I sustained the objection. Don't volunteer information.

THE WITNESS: Sorry.

(Mr. MacCrate read from Defendant's Exhibit

326 in evidence, to the jury.)

MR. MacCRATE: I suggest we recess now.

THE COURT: All right.

Members of the jury, we will take a ten-minute recess. You may withdraw to the jury room.

(Recess.)

(Jury not present.)

THE COURT: Before the jury comes in I would like to ask a question that isn't clear to me.

By whom was this aplication for the oil import quota made?

MR. MacCRATE: The one actually made?

THE COURT: The one granted.

MR. MacCRATE: By Phillips Petroleum Company.

THE COURT: How did it get from Phillips Corporation of Puerto Rico to PRIDCO which was a 25 per cent shareholder?

MR. MacCRATE: The final papers included contractual arrangements that were entered into between this new corporation, Core and the Puerto Rican Government. There are contracts in May of 1965 and then later I believe March of 1966 after the quota had been awarded, the Phillips Puerto Rico Company is established and did anticipate that it will operate under the quota and --

THE COURT: I take it Phillips was the person possessing the quota?

MR. MacCRATE: Yes.

Your Honor, the oil was imported by Phillips Puerto Rico Core.

THE COURT: You agree with the statement?

MR. FARRELL: That is right.

THE COURT: Were there not regulations published in the Federal Register under which these were issued?

MR. MacCRATE: Yes.

THE COURT: I don't have them going back that far. The CFR's don't go back that far.

MR. MacCRATE: We have a collection of CFR's on this subject and I will undertake to get a set together for your Honor.

THE COURT: When the Government issues largess to anybody they usually require the application be signed by the real party in interest, that is standard bureaucratess in this country. Don't they have a regulation that says youhave to do that?

MR. MacCRATE: But the whole application visualized that a company would be established so that there was no change in direction. What took place was exactly what had been visualized.

THE COURT: All right. At your convenience you might get those papers together and if you agree on them, I will take them.

Please bring in the jury.

(Jury present.)

BY MR. MacCRATE:

Q Mr. Willey, did there come a time in July of 1965 when you proposed to Mr. Anderson an alternative means of realizing your mutual interests with him?

THE COURT: Talking about Puerto Rico now?

MR. MacCRATE: Yes, your Honor.

A I'm sorry --

THE COURT: Reframe the question, please.

Q In July of 1965 did there come a time when you made a suggestion to Mr. Anderson to realize your mutual interest with him with respect to Puerto Rico?

A I don't remember the date.

Q I show you Plaintiff's Exhibit 178 and ask you if that refreshes your recollection?

A Yes, I remember the letter.

Q You remember writing to Mr. Anderson at that time?

A Yes.

Q What was the alternative proposal that you were advancing to him at that time?

A I had suggested that we make some kind of deal with Phillips whereby they would let Prudential drill off-shore wells for them and we would provide a drilling ship to do it, which is a highly profitable venture.

Q This was an alternative to a satellite poant?

A That is what it says there.

Q Did Mr. Shippee go to Puerto Rico in August of 1965?

A I don't know that.

Q Do you recall him telling you about a trip that he made to Puerto Rico where he met Mr. Sam Van Hyning?

A I don't recall it.

Q I show you a copy of Plaintiff's Exhibit 179 and ask you if that refreshes your recollection regarding a trip of Mr. Shippee's?

A I have some memory of this, yes.

Q Did you discuss with Mr. Shippee in or about August of 1965 the possibility of dropping matters with Phillips and looking to Commonwealth Oil Refining Company if the Phillips proposal fell through?

A I don't remember that, no, sir.

Q Does the next to last paragraph of Plaintiff's Exhibit 179 refresh your recollection in that regard?

A Yes, I believe so.

Q What is your refreshed recollection now?

A That there was some good chance that Phillips might fail and if they did we would like to proceed with something with the Commonwealth as we promised them.

Q But it was with Commonwealth Oil Refining Company, was it not?

A Correct.

Q With respect to January 1966, earlier in the year, did you attend a meeting with Mr. Leo Johnstone of Phillips?

A No, I don't recall that I did.

Q I will show you Plaintiff's Exhibit 187 and ask you -- invite your attention to the first paragraph and ask you if that refreshes your recollection?

A I don't recall it but I believe it is true. I don't deny it.

Q You don't recall being at a meeting with Mr. Johnston in New York early in 1966?

A I just don't remember Mr. Johnstone at all but apparently I was in a meeting with him.

Q Do you have any recollection of a meeting early in 1966 at which Mr. Shippee was speaking to a Phillips representative?

A I don't recall that.

Q So that as far as any meeting with a Philips representative in January 1966, your mind is a blank at this time?

A That is right, I don't recall it.

Q As of October 1966 did Prudential Equities have any public shareholders?

MR. FARRELL: Your Honor, we have stipulated for the record the situation with respect to these corporations and I don't see what the purpose is.

THE COURT: What is the stipulation as of that particular date?

MR. MacCRATE: Is it stipulated there were no public shareholders of Prudential Equities as of October 4, 1966?

MR. FARRELL: I don't recall the date, Mr. MacCrate. I don't know. The stipulation --

THE COURT: If you don't recall it I will let the witness be asked. He was president of it.

MR. FARRELL: He was not president, not in 1966. He left for two years.

A No, I don't know anything about it.

Q As of the time you were corresponding with Mr. Shippee in 1966 is it your testimony that you knew nothing about the share ownership of Prudential Equities and whether it was a public or private company?

A That is correct, I don't recall.

Q Would you list for us those who you understand share in any recovery in this action?

THE COURT: You are asking as of this particular moment in time, today?

Q As of today.

MR. FARRELL: Your Honor, this has been covered on cross.

THE COURT: I am not sure it has been covered, this particular question.

A I want to tell you very clearly that I have no claim whatsoever against Phillips Petroleum. It is all Prudential by whatever name or whatever state it is and whatever settlement or award would be, I might participate but I have no claim against Phillips Petroleum and I don't know anybody else who has.

THE COURT: What is your financial interest if any in the outcome of this particular litigation?

THE WITNESS: It hasn't been determined.

Q Would you identify for us other individuals of whom you know who share in that situation?

A I believe that it would be Mr. Young and Mr. Qilliam Wright, the only ones I can tell you right now who have any interest.

Q Those three.

MR. MacCRATE: Will you mark this for identification, please.

(Defendant's Exhibit 335 was marked for identification.)

Q Mr. Willey, were you informed as to any discussions in November of 1967 between MR. Shippee and representatives of the estate of Jack Coan?

A No, I am not familiar with that.

Q I show you Defendant's Exhibit 335 for identification and ask you if you can identify the handwriting on that document?

A It is Mr. Shippee's handwriting.

Q I ask you to identify the first witness that appears in the lower left-hand corner of the second page. Do you know that name?

A Yes, a lifetime friend of mine, Robert Conrad, an attorney in Washington.

Q I ask you to read the third and fourth pages which were made in order to facilitate the reading of the handwriting and the report, simply to duplicate what appears in the handwritten text?

A I don't recognize the handwriting of three words or so there.

Q I just wanted you to examine it so that you can see the text. Then I want to ask you, Mr. Willey, whether that refreshed your recollection as to any arrange-

ment between Mr. Shippee and the estate of Jack Coan?

A No, I was not involved in that.

Q Did you ever hear of any arrangment between the two?

A No.

MR. MacCRATE: That completes my cross-examination.

THE COURT: Any redirect examination?

MR. FARRELL: Just two questions, your Honor.

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Willey, did Prudential ever go ahead with any business arrangement with Commonwealth Oil?

A To my knowledge they did not.

Q Secondly, would you explain for us the concept of first refusal in your proposed petrochemical project?

A Yes.

MR. MacCRATE: Objection unless it is more specifically identified.

THE COURT: Perhaps it would be more helpful to amplify the question. I think I know what you mean.

Q In your testimony on Friday Mr. MacCrate asked you about the first refusal concept which was in the

proposal or the concept for the Puerto Rican petrochemical project that you made.

I ask you what the concept of first refusal was?

A Yes. It involves donstream from the plant and the concept is that any plant in Puerto Rico would have first chance to get, or some plant that would be built, a satellite plant, would have the right of first refusal before it was sent to the States or elsewhere.

MR. FARRELL: That is all I have.

THE COURT: Anything else?

MR. MacCRATE: No, sir.

THE COURT: You are excused.

(Witness excused.)

MR. FARRELL: Mr. Robert Anderson.

- -

R O B E R T B. A N D E R S O N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Anderson, were you not formerly Secretary of Treasury of the United States?

A That is correct.

Q What year was that?

A 1957 to 1961.

Q Prior to that time you held any cabinet or sub-cabinet post?

A Secretary of Navy and Deputy Secretary of Defense.

Q Prior to that time had you any further Government service?

A In the State Government I was Assistant Attorney General, State Tax Commissioner and Chairman of the Unemployment Compensation Commission.

THE COURT: In New York?

THE WITNESS: Texas.

THE COURT: Please speak loud, Mr. Anderson, so all of the jurors can hear you. If any juror can't hear please raise your hand.

Q Mr. Anderson, turning your attention to November 1962, do you recall having a conversation with Mr. Shippee and Mr. Willey with respect to a proposed petrochemical project in Puerto Rico?

A Without being specific as to the time 1962, I did have a conversation with them.

Q Can you tell us to the best of your recollection where that conversation took place and what was said?

A In my office as I recall.

Q Can you tell us what was said?

A They discussed with me the fact that they had been associated with the Warburg Corporation and Kuhn Loeb Corporation and with others in considering the possibility of building a large plant in Puerto Rico which would make various kinds of chemicals and which chemicals would be used in satellite plants to make finished project, largely to be consumed in the Puerto Rican and U. S. market.

(Continued on next page.)

Q And what did you say?

A I said to them that the first requirement would be to get an import quota, and that unless they got an import quota that such a concept would be meaningless, that an import quota was absolutely essential.

Q Was there a discussion with respect to involving an oil company in the project?

A It was my suggestion, as I recall, that in order to interest anyone in the United States government and to make a presentable case to the Oil Import Board, that it would be necessary to have a large company with experience and with financial capability to build a plant and to manufacture the product and to utilize at least a part of it.

Q And did you discuss the possibility of Phillips being a suitable company?

A I did.

MR. MacCRATE: Objection, your Honor. I believe that we can be more specific.

THE COURT: Well, it is leading. Frame another question.

Q Was there a discussion concerning Phillips in that meeting?

A There was.

Q Can you tell me to the best of your recollection what the discussion was?

A As I recall, we discussed the fact that I had a close association with Phillips, that I had an agreement with them to try to bring to their attention certain proposals from time to time, that I had done so, that they were a corporation that had a great deal of chemical experience, that they owned reserves in Venezuela and other parts of the western hemisphere, that I had business experience with them before, that they did not have an east coast refinery, and I thought it would be a logical group with whom they could become associated.

Q And at that time, Mr. Anderson, were you on a retainer with Phillips?

A Yes, sir.

Q Were they paying you a yearly amount?

A Yes, sir.

Q How much was that?

A $50,000 a year.

Q Was this Puerto Rican project within the scope of the duties that you performed for that retainer, that is calling Phillips' attention to this?

MR. MacCRATE: Objection, your Honor.

THE COURT: Because it calls for a conclusion?

MR. MacCRATE: Yes, your Honor.

THE COURT: The witness may be asked what was the scope of this retainer.

Q What was the scope of your retainer, Mr. Anderson?

A To give them economic counsel and advise, to counsel with them on various problems which they might think my counsel would be useful, to bring to their attention investment opportunitites, to review investment opportunities that were presented to them by others, where they thought my counsel would be of use to them.

Q Did you at that time consider the proposed petrochemical project as an investment opportunity?

A I did.

THE COURT: Duri ng what period, sir, did you have this retainer with Phillips?

THE WITNESS: From 1961, after I retired from the government, until about 1967. I'm not sure of the last date.

THE COURT: You are a member of the bar in Texas?

THE WITNESS: Yes, sir.

Q Mr. Anderson, did you ever discuss with Mr. Adams, the chairman of Phillips, your being a director of

Phillips?

A Mr. Adams discussed it with me.

Q Can you tell me the content of that discussion?

A I was offered an opportunity to become a director of a great many corporations, and oil companies, after my retirement from the government. I discussed it with Mr. Adams. Mr. Adams suggested that he would offer me an opportunity to become a board member of his company, but thought it would be more desirable both from his point of view and from mine, if I did not accept a directorship, since accepting a directorship would preclude me from sharing in any venture in which we were jointly interested and so long as I was not a director, did not have corporate responsibilities of this sort, I would be free if both sides elected to share in ventures of various kinds.

Q Was it your understanding that you would have a participation in the petrochemical project at that time?

A Yes, sir.

Q Thereafter, did you get in touch with Phillips, after the meeting about which you have just testified?

A I did.

Q Did you speak to Mr. Learned --

MR. MacCRATE: Objection, your Honor. Leading.

THE COURT: Well, I think it is leading.

MR. MacCRATE: I think the facts may be brought out.

THE COURT: He may be asked whether he talked to Mr. Learned about the matter.

C Did you speak to Mr. Learned about this matter?

A I did.

Q Can you tell me what you said to him and what he said to you?

THE COURT: Will you fix the time and place, first?

MR. FARRELL: Yes.

Q Was this shortly after the meeting --

THE COURT: Just ask him when was it, where.

Q When was it?

A It was in November of 1963.

Q '63?

A '62, and I fix the date because it was at the time of the annual meeting of the American Petroleum Association which always takes place or did take place in November of each year. I called for Mr. Adams in Bartlesville. I was told that both Mr. Adams and most of the senior officials of Phillips Petroleum had gone to Chicago, where the American Petroleum Institute was meeting.

I then called for Mr. Adams at the hotel in Chicago. I was told that Mr. Adams was not at that time available and that I could talk to Mr. Learned, and I did talk to Mr. Learned.

THE COURT: By telephone?

THE WITNESS: By telephone.

I told him about the proposed plant and asked him if he thought he would be interested. He said that they would be, and I suggested that he write a letter and direct it to Mr. Shippee, and express the interest of Phillips Petroleum Company.

Q Mr. Anderson, calling your attention to the summer of 1963, do you recall a meeting in your office in early July of that year?

A Yes, sir.

Q And can you tell us who was present at that meeting?

A As I recall, Mr. Shippee, Mr. Chapman, Mr. Coan, Mr. Wright and myself.

Q And can you tell me to the best of your recollection the substance of the discussion at that meeting?

A We discussed the ways in which to try to make a logical, presentable and valid case to the Import Board concerning the acquisition of an import quota, for the establishment of a core chemical plant in Puerto Rico, and

try to allocate some measure of responsibility among those who were present as to the various tasks, or portions of the task which they would undertake.

Q Can you tell me to the best of your recollection how those responsibilities were allocated?

A So far as I can recall, Mr. Chapman was to handle all of the matters in Washington; I was to be available for consultations by any of the group; I was to try to maintain liason as was required and desired between Phillips and the group; I was to consult with Mr. Chpaman when Mr. Chapman thought it was important; and Mr. Shippee and Mr. Wright and others were to try to develop other sources of utilization of products that might come out of the plant.

MR. MacCRATE: Your Honor, may I inquire if the witness is referring to notes in the course of this?

THE WITNESS: No, sir.

THE COURT: I don't see any notes.

THE WITNESS: No, I don't have any.

THE COURT: What are you presently engaged in, Mr. Anderson?

THE WITNESS: In a consulting service and investment banking and some legal work, although minor.

THE COURT: Go ahead.

Q And thereafter, Mr. Anderson, did you maintain

liason with Phillips concerning the project?

A I spoke to all of the people involved from time to time for a good many months following that period.

Q Mr. Anderson, did there come a time in the summer of 1964, when you spoke with Mr. Durand of the Economic Development Administration?

A I again could not be precise as to the time. I was told that Mr. Durand was coming, that he was going, as I recall, to give testimony or to be preparing to give testimony to the Oil Import Quota group, that he expressed a desire to visit with me, and I said I would be glad to visit with him.

MR. MacCRATE: Has that meeting been fixed in time?

MR. FARRELL: He said he couldn't recall the exact date.

THE COURT: You will have a chance to cross examine. I understand the question asked him about 1964.

MR. FARRELL: That's correct. July.

Q And did you in fact meet with Mr. Durand concerning his testimony?

A I did.

MR. MacCRATE: Objection, your Honor. I move to strike. Leading. There was no discussion as to the

subject matter.

MR. FARRELL: There was.

THE COURT: Don't argue, gentlemen. I will request there be no more leading questions, if we can possibly avoid it.

Let's find out what was said. If it is admissible, I will take it.

Q What was said at the meeting, to the best of your recollection, Mr. Anderson?

A To the best of my recollection, we discussed the project, the advantages that would accrue to Puerto Rico, the advantages that would accrue because of the involvement of Phillips Petroleum Company, and reasons which we could or should present to the Import Quota Board justifying the granting of an import quota.

Q During the period of -- calling your attention to the period from July, 1963 and subsequent thereto, did you speak with Mr. Chapman concerning the oil import allocation that was being applied for?

A Mr. Chapman would call me from time to time. I would call him from time to time to discuss this.

Q Mr. Anderson, at the time that the import allocations was applied for, which is January '64, was it your understanding that this was a joint project between Phillips

and Prudential?

A I beg your pardon?

Q At the time the application was made, in January '64, was it your understanding that this was a joint project between Prudential and Phillips?

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained.

Q At the time the application was made in January '64, was Prudential still part of the proposed petrochemical project, a participant in the proposed petrochemical project?

MR. MacCRATE: Objection, your Honor.

THE COURT: I will sustain it.

This witness may testify as to anything he was told by persons acting in behalf of Phillips of anything he told them, which might be relevant, but as far as his understanding of who was what, that is not admissible on that form question.

Q Had anyone told you at any time up to January 1964 that Prudential was not a participant?

A The only recollection which I have is that at stome time I believe after the application had been made, but before it was granted, Mr. Phillips -- I mean, Mr. Adams, and Mr. Learned, came to my office one afternoon and

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stated to me that they planned to pursue an independent course in the acquisition and development of a chemical plant in Puerto Rico.

Q Can you place the approximate time of that meeting?

A I do not recall precisely. It was some time prior to Mr. Learned replacing Mr. Adams as chairman, but within a matter of months, between the time that mr. Adams would have retired and the time Mr. Learned took over, some time in that period. I do not know exactly the time.

Q Do you know whether it was subsequent to a trip that Mr. Shippee took to Bartlesville in January 1965?

A Again as to fixing of relative positions, my recollection would be that it was subsequent to that visit, because the matter of the visit, I mean -- the only matter at that time which was discussed, was the position which Phillips intended to take.

MR. MacCRATE: I move to strike "because," your Honor.

THE COURT: Well, I won't strike it out, but the jury will understand that this is the witness' reasoning as to how he is refreshing his recollection in attempting to answer concerning the date.

Q Mr. Anderson, at any time with respect to the

proposed Puerto Rican project, was it suggested that or were you given responsibility for dividing the shares of the participation to the parties?

MR. MacCRATE: Objection.

THE COURT: Sustained as to form.

Q At any time, Mr. Anderson, was it your responsibility --

THE COURT: No. Did anyone ask him or tell him or direct him.

Q Did anyone ask you or tell you that you would divide the participations in the project?

A Several times, statements were made to me by Mr. Shippee and by others that at some point I would be called upon to make recommendations as to how shares might be divided between the various participants based upon what each had contributed to the project.

Q And did you agree to do that?

MR. MacCRATE: Objection, your Honor.

THE COURT: I will sustain it. Who are the others? Who besides Mr. Shippee said to you that the time would come when you would be called upon to --

THE WITNESS: Mr. Wright, Mr. Willey, Mr. Chapman, Mr. Coan and I suppose that's about the group.

Q Now, Mr. Anderson, do you recall in your office

in November, 1966 with Mr. Learned and with Mr. Fred Glass?

A Yes, sir.

MR. MacCRATE: Your Honor, may I approach the side bar?

THE COURT: Yes, certainly. It's about time to break for the noon recess in any event.

Before I excuse the jurors for lunch, I would like to make an observation about our scheduling tomorrow, so that you may plan your other obligations.

The Court will probably begin tomorrow morning at 10:30, and probably run straight through until a little bit past 2 o'clock, when we will break for lunch, and then you will be released for the balance of the day tomorrow. So you may guide your scheduling of your own activities accordingly.

Please withdraw for lunch now and return at 2 o'clock. We will resume at 2.

You may step down, Mr. Anderson.

(Jury left the courtroom.)

(At the side bar.)

MR. FARRELL: There was a settlement conference which took place in '66.

THE COURT: Plaintiff's 203 and 204 for identification.

MR. FARRELL: And some discussion went on at least until January '67 and Mr. Anderson was participating in an attempt to make peace. The only point I'm making, your Honor, is directed to Mr. MacCrate's claim that this was a stale claim when the suit was brought. This is not the laches point. The point is, Mr. MacCrate made a large point in his opening that this was a stale claim, yet the people were trying to work it out as late, at least according to these documents, as January '67 and there is another document as late as May, 1967, which I'm not going to introduce through Mr. Anderson.

MR. MacCRATE: To the extent Mr. Farrell may inquire of Mr. Anderson as to what he, Mr. Anderson, did, that would be one matter. I believe it is quite a different matter to go into any terms that may have been discussed or what was the subject matter of a possible settlement.

THE COURT: I don't know that Mr. Farrell intends to do that. I don't have any suggestion on his part to date.

MR. FARRELL: No.

THE COURT: I'm a little bit concerned about this stale claim aspect of this litigation, because the jury here is trying to decide legal claims, and if the claims are brought within the applicable statute of limitations,

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the jury is not concerned with their staleness. Laches would be for the Court on the equitable claims here.

Am I mistaken in that concept?

MR. MacCRATE: I believe that would, so far as the defense, be controlling, but so far as an evaluation of the good faith in which a claim is presented, tne way in which the claim varied, individuals asserting claims, a company asserting a claim, an individual asserting a claim against an airline, an individual asserting a claim against Oscar Chapman, all of these variations --

THE COURT: Well, the variations, of course, have a bearing on the credibility to be attached to the testimony given at the trial, but I really don't think from the point of view of a non-equity case, that there is any staleness here. They served and filed their complaint within the statute of limitations, and the delay between the filing of the complaint and the trial cannot be really attributed to anyone interested in this case.

MR. MacCRATE: But a delay in making an identifiable demand, your Honor, defining, for example, the deal in which it is claimed that individuals were a part --

THE COURT: You see, I don't think that a delay in making a definable claim would be relevant. Making inconsistent or different claims may be relevant. Probably

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attempting to settle it by getting a petrochemical plant, or by getting something else in lieu of what they thought they were entitled to would not bar them in any way, would not affect their position adversely.

I am really puzzled by what Mr. Willey said. As I understood Mr. Willey, he no longer works for Prudential, and he has an interest in this litigation, and it is to be set. It is not my function to examine or cross examine a witness, but by whom? That's the question here.

He has an interest in the outcome and it is to be set by somebody. He gives it to us in the passive tense.

MR. FARRELL: Your Honor, it isn't that he has an interest in the outcome in the sense that there is any assignment.

THE COURT: He is going to get a piece of the action.

MR. FARRELL: Yes.

THE COURT: He doesn't know how much.

MR. FARRELL: No.

THE COURT: Doesn't tell us whose going to get it.

MR. FARRELL: It is going to be set according to the letter -- I don't think that letter has been introduced, but Mr. Willey answered the letter that has been

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introduced, when Mr. Shippee proposed a 15 percent interest. Mr. Willey answered that letter and said:

"I think 20 would be fairer, but let's talk about it some time," and there's been no settlement. In fact, I think I would offer that letter. There's been no settlement at the time as to how much because the proceeds of the suit would have compensated him as a substitute for the project itself.

THE COURT: May we go off the record for a minute?

(Discussion off the record.)

THE COURT: I think I'd be better off to take these letters, but not to be shown to the jury as bearing on the question of laches.

MR. FARRELL: The only problem I have is after Mr. MacCrate's opening --

THE COURT: You see, you didn't object to the opening.

MR. FARRELL: He's made the point from time to time, and I think that if we don't inquire into this, at least up to the point of getting in discussions, I won't even give the content of the discussions except it was to reconcile --

THE COURT: He went and made a demand in their

behalf, didn't he? Is there any question about that?

MR. MacCRATE: Which document is that --

THE COURT: Neither of these documents really show about this witness, do they?

MR. FARRELL: Well, yes, that's a letter to Mr. Learned, and it refers to the meeting. I was going to use it to refresh Mr. Anderson's recollection.

THE COURT: Certainly you can use it to refresh his recollection. That wouldn't make it admissible. He had a meeting, he may say, and if he made any demand in behalf of Prudential, he can tell us that. Do you see any reason why he cannot?

MR. MacCRATE: So far as that is concerned, your Honor, I would have no objection.

THE COURT: Who is this Mr. Glass?

MR. FARRELL: Mr. Glass was a member of the board of directors of Prudential, the parent company, your Honor, and he had been asked to try to settle it because he knew Mr. Learned.

THE COURT: 203 certainly tells us nothing. It just tells us that Mr. Wash would be delighted to talk with Mr. Glass about any satellite plant he wants to propose. That is what it says.

MR. FARRELL: I am using them only to refresh

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the witness' recollection.

THE COURT: That you may certainly do. You can show him anything.

All right. We will be in recess.

(Luncheon recess.)

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AFTERNOON SESSION

(2.00 p.m.)

(Jury present.)

R O B E R T B. A N D E R S O N, resumed.

DIRECT EXAMINATION (Continued)

BY MR. FARRELL:

Q Mr. Anderson, did you discuss with anyone at Phillips what Phillips' share would be of the proposed petrochemical project?

A From the initiation of the project and for some time thereafter there were conversations with Mr. Adams and Mr. Shippee and Kuhn Loeb group and Mr. Wright and others as to the fact that at some point a division would have to be made among all the partners to the arrangement and I suppose that I viewed the thing more than anything else as trying to act as one would hope that everybody would be reasonable in their approach to it.

MR. MacCRATE: I move that the answer be stricken as non-responsive.

THE COURT: I will strike out all of the answer except the fact, that portion of the answer where he says that he had discussions with Mr. Adams. That part may stand.

Q Mr. Anderson, what was the content of the discus-

sion with Mr. Adams?

A At some point there would have to be an arrangement made or discussion held as to the specifics of how all the partners to the arrangement participated.

Q Were you to participate in that allocation?

A Yes, sir.

THE COURT: I don't understand the last question and answer.

MR. FARRELL: I am sorry. I understand why your Honor doesn't understand.

THE COURT: Thank you, Mr. Farrell. On that basis can we go forward with the trial?

Q Were you to assist in allocating the shares, Mr. Anderson?

MR. MacCRATE: Leading and calling for a conclusion.

THE COURT: It is leading and does call for a conclusion but let's find out exactly who asked him to do what with respect to the act of allocating the shares.

Q What did Mr. Adams ask you to do with respect to the act of allocating the shares?

A Mr. Farrell, my concersations with each person involved in this arrangement --

THE COURT: Please try to stick with Mr. Adams.

A Simply at some point we would have to sit down and specifically decide how everybody participated in the venture.

THE COURT: Who is the we in that answer?

A We, Adams, Prudential, Phillips, Shippee, Willey, Wright, whowever else was involved in it.

MR. MacCRATE: Who was the speaker, your Honor?

THE COURT: You will have a chance to cross-examine him in due time, Mr. MacCrate.

Q Who was the speaker, Mr. Anderson?

A I suppose Mr. Adams and I both spoke.

Q MR. Anderson, do you recall a meeting in your office in November 1966 with Mr. Learned and Mr. Glass?

A There was a meeting in my office with Mr. Learned and Mr. Glass. I can't be specifically precise as to the month and the time but, yes, in that area of 1966.

Q What was the discussion that took place at that meeting?

A I frankly had been trying to reconcile the differences between Prudential and Phillips and trying to avoid them getting into the position of litigation.

I had suggested to Mr. Learned that we bring in the services of Mr. Glass who was on the board of

directors of Prudential and see if there wasn't some way of reconciling their differences.

Q This was the discussion at that meeting?

A I recall the discussion, it was Mr. Learned would appoint somebody from Phillips to discuss it with Mr. Glass. Mr. Glass would be representing the Prudential interests and they would get together and see if there wasn't something that could be done to resolve their differences.

MR. FARRELL: That is all I have, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MacCRATE:

Q Mr. Anderson, Mr. Adams is now dead, is he not?

A Yes, sir.

Q At this conversation which you say took place at the end of 1962, was Mr. Learned present?

A Was this conversation you are talking about --

Q I understood you to testify there was a discussion with Mr. Adams about there having to be at some time a division of interests in the project.

Did that take place in November or December of 1962?

A Mr. MacCrate, I don't remember what took place in November of 1962 except, as I recall, that is when I

tried to call Mr. Adams at Bartlesville and found they had all gone to Chicago. I called and talked to Mr. Learned and the subject of that conversation was purely whether or not they would be interested in joining with Prudential as a partner in establishing a core chemical plant in Puerto Rico.

Q That is your only recollection as to what was discussed in that telephone conversation with Mr. Learned at that time?

A That is correct.

Q You have no recollection of any discussion at or about that time with Mr. Adams?

A No, sir, not at that time.

Q You have been referring to a discussion about at some time a decision might have to be made about the division of equities. Now, when did that conversation take place?

A Mr. MacCrate, I would not know precisely. I suspect in this period I talked to Mr. Adams every third or fourth day on some subject. In some of those conversations subsequent to the time that Mr. Learned wrote to Mr. Shippee and said they were interested in joining in the project, the subject came up from time to time that at some point everybody would have to sit down and decide

how the various parties would divide their interests.

Q On your direct examination you were referring to your conversation with Mr. Learned and you indicated that you asked Mr. Learned if Phillips was interested.

Would you tell us exactly what it was that you were asking Phillips whether or not it was interested in? What was it that you were speaking about to him at that time?

A The Puerto Rican refinery plant or core plant.

Q Did you specify what the nature of the interest was that you sought from Phillips?

A As I recall, MR. Wright and Mr. Shippee were both in my office present at the time that I put in the call to Bartlesville. They were both there a few minutes later when I talked to Mr. Learned.

I said simply we were there discussing the establishment of a core chemical plant in Puerto Rico and was this a project in which Phillips would like to join or consider joining as a partner in the development of the plant and he said he thought they would.

And I said if you do please write to Mr. Shippee and gave him the address.

Q Today, 1976 --

A Yes, sir.

Q It is your testimony that you asked Mr. Learned whether he would be interested in becoming a partner in this project?

A Yes, sir.

Q Did you indicate to Mr. Learned what you would like to get from him at that time?

A No, sir.

Q You made no request for a letter?

A It was a -- I made a request for a letter, yes.

Q Did you indicate what you wanted that letter for?

A Well, I wanted to establish whether or not we were concretely proceeding with trying to establish a plant jointly.

(Continued on next page.)

Q Isn't it a fact, Mr. Anderson, that you asked for a letter that could be shown to the Puerto Rican authorities and to the Interior Department to indicate that there was a source of crude oil and an opportunity to sell the product of a refinery that --

A I might have discussed those subjects. I might have.

Q Wasn't that what you were asking from Mr. Learned on that occasion?

A No, sir. I was asking Mr. Learned if he wanted to join this group in the partnership arrangements or joint arrangement to go into Puerto Rico because I had already told them that unless they got a partner of this size they were wasting their time.

Q And this conversation took place in November of 1962, is that your testimony?

A That is my testimony, during a meeting of the Petroleum Institute in Chicago.

Q Now, Mr. Anderson, after this conversation, was the letter received from Mr. Learned?

A A letter was received from Mr. Learned and I had a copy of it in my files for a long time. I cannot find it any more. I think it was addressed to Mr. Shippee, but at least I had a copy of it.

Q I show you P-69 and ask you if that is the letter to which you refer?

A Yes, sir.

Q Was there another letter?

A Not that I recall.

Q Do you recall my asking you at your examination before trial whether you received this letter, P-69, and you indicated that there was another letter, not that letter?

MR. FARRELL: Your Honor, to this method of questioning.

THE COURT: Yes, I sustain the objection.

A I do not recall -

THE COURT: Wait just a moment, Mr. Anderson. I have sustained an objection to the last question.

THE WITNESS: I'm sorry.

THE COURT: I don't believe I have the deposition of Mr. Anderson.

The procedure to be followed in connection with depositions is to ask a witness whether he recalls being asked this question and giving that answer, and read the question and then read the answer.

MR. FARRELL: Mr. Anderson, do you have a copy of your deposition?

THE WITNESS: Yes, I do.

MR. FARRELL: Could I give that to the Judge because Mr. MacCrate can let you use his?

THE WITNESS: Sure.

THE COURT: Can you give us the page?

MR. MacCRATE: Page 28, commencing at line 13.

Q Do you recall, Mr. Anderson, being asked the following question and making the following response:

"Q I would like to show you what has been previously marked as Plaintiff's Exhibit 9 for identification" --

MR. MacCRATE: Which is P-69, your Honor, at this trial.

"Q -- and ask you whether you have had a chance to see that document before, particularly whether you have had a chance to see it at or about the time it was written. It bears the date of November 13, 1962.

"A Yes, I have a copy of this letter in my files. I have sen it.

"Q Is that the letter that you discussed with Mr. Learned in your telephone conversation with him?

"A No. Mr. Learned wrote another letter.

He wrote another letter right after the conversation, but it is not in my file, and I remember seeing it, but I just don't recall the text of it."

Did you give those answers?

A Yes, I did, and I do now recall, I think, that there was a letter which, as I recall, had only one paragraph and omitted these 1, 2, 3 items. It was a longer single paragraph, but I do not remember the text of it.

Q Written on the same date, Mr. Anderson?

A I don't remember. It was written shortly after my conversation with Mr. Learned in Chicago.

Q And it is your recollection that Mr. Learned wrote two letters as a result of his conversation with you?

A Well, what is refreshing my memory is that I do not recall -- I do recall a letter which I think omitted these 1, 2, 3 items and had a longer single paragraph, but I do not have it in the file.

Q Do you recall what was in that paragraph?

A No, I do not, Mr. MacCrate. If my memory is correct, they were all addressed to Mr. Shippee, not to Me. I got copies of them.

Q Was the other letter addressed to Mr. Shippee

as well?

A That is my recollection.

Q I believe you testified your relationship with Phillips permitted you to have a personal interest in transactions with Phillips, is that correct?

A That is correct.

Q Can you identify any venture in which You shared a specific participation with Phillips between 1961 and to date?

A In which I actually did share?

Q Yes.

A No, sir.

Q Have you during that period had ventures where you shared participation with Mr. Shippee?

A No, sir.

Q Do you have any ommon interest today with Mr. Shippee in Property?

A No, sir.

Q Did any officer of Phillips ever ask you to distribute participations with respect to any Puerto Rican project or with respect to Phillips Puerto Rico Core?

A Not to distribute, no.

Q Were you at any time authorized by Phillips to make commitments for it to third parties?

MR. FARRELL: Your Honor, I object to the form of the question.

THE COURT: Sustained.

Q Did you ever discuss with any officer of Phillips obtaining authority to bind Phillips to third parties?

THE COURT: On anything?

MR. FARRELL: Objection.

THE COURT: Is that what this question is, about anything?

MR. MacCRATE: About anything.

THE COURT: I will permit that.

A Yes, sir.

Q Would you identify the conversation, give us the time, the place and who was present.

A I was discussing with Mr. Adams the possibility of arranging a project in Iran whereby the Phillips Petroleum Company would drill on land which had been identified by the Iranian Oil Company, and that there would be a division of profits between the Iranian Oil Company and Phillips Petroleum Company on such production as might be acquired, then each party to the arrangement would take out of the common interest a portion of their profits, and the remaining profits would be dedicated to

searching for and trying to develop solid minerals in Iran.

Q And who was present at this time, you and Mr. Adams?

A Yes, but Mr. Adams sent both me and another officer of Phillips, Mr. -- I can't recall his name. I would have to look at a list of officers to recall his name. We went to Iran and had discussions along this line with his Imperial Majesty, the Shah, and with the Iranian Oil Company to this effect.

Q And in this conversation that Mr. Adams had with you, he expressly authorized you to enter int this transaction on behalf of Phillips?

A He authorized me to discuss it specifically with the Government of Iran, that this is what Phillips would commit to do. We never did arrange a formal contract. It was not accepted by Iran.

Q And Mr. Adams indicated the specific proposal that Phillips was prepared to enter into, is that correct?

A Well, to the extent that I have outlined to you. Otherwise you can be sure I would not approach a government.

Q Are there any other instances where you had conversations with an officer of Phillips about specific authority for you to undertake to bind Phillips to a third

party?

A Mr. MacCrate, let me differentiate, if I may, with the Court's permission, between "bind," which in my legal terminology means the signing of a final contract, and spelling out in fair detail what Phillips would be prepared to do, subject to agreement on all sides as to the project, yes.

Q You're distinguishing between the negotiation of a contract and the actual contract itself?

A That's right.

Q And that your authority in these instances of which you speak related to negotiation?

A That is correct.

Q And not to the actual entering into a contract?

A No, it would have been entered into by an appropriate officer of the corporation.

Q Now, with respect to any joint ventures in which Phillips may have participated or considered participating, were you at any time authorized by any officer of Phillips to negotiate an agreement of joint venture?

A Yes, I was authorized from time to time to negotiate with people on specific things.

Q Could you identify those specific instances?

A I can identify some. I was authorized to discuss the proposal of forming a company to market their plastic pipe which depended upon the acquisition of sufficient contracts from third parties to make such an establishment of such a plant feasible.

At another time I negotiated at Bartlesville with Mr. Adams and other members of his company and Mitsui Corporation, when we were all present, the establishment of a joint petroleum chemical plant In Japn with Mitsui Corporation and from time to time at Mr. Adams" suggestion would ask companies whether or not they were interested or ask Mr. Adams whether or not he was interested in a proposal that was submitted to me.

Q Did either Mr. Adams or Mr. Learned ask you in 1962 or 1963 to negotiate any agreement with Prudential Oil or with Mr. Shippee or Mr. Young, Mr. Wright or yourself?

A No, I approached them. They did not approach me.

THE COURT: "Them" being who, sir?

THE WITNESS: I approached Phillips in behalf of Prudential's interest, not the other way around.

Q You regarded yourself as a partner of the Shippee group?

MR. FARRELL: Objection.

THE COURT: Overruled. Cross-examination.

A Yes, I would have shared on their side.

Q Did you in fact at any time make a claim against Phillips with respect to the Puerto Rican project?

A No, sir.

Q Were you asked either by Mr. Shippee or by Mr. Willey or by Mr. Wright or by Mr. Young, after October 1966, to establish what they should recover out of any recovery that might be obtained in this action?

A No, sir.

Q Mr. Anderson, I show you Plaintiff's Exhibit P-83 and ask you if at or about the date of that exhibit, which has been marked in evidence, of December 31, 1962, you received that memorandum?

A I have only a vague recollection of it, Mr. MacCrate.

(Continued on next page.)

Q You have a recollection of having seen it before?

A Vague recollection, yes, as I read it.

Q In the course of the pretrial proceedings in this action or prior to that time?

A I think I saw it prior to that time, although I am vague about it.

Q Did you at any time discuss the contents of that memorandum any time around the end of 1962 or the beginning of 1963 with any officer of Phillips?

A I don't recall specifically having done so.

Q Did you regard it as your personal function to communicate between Mr. Shippee and Mr. Willey, Mr. Young and Phillips?

A Regarded it as my specific responsibility to relay any conversations coming to me from the Prudential-Shippee group or Mr. Chapman or Phillips Petroleum to the other parties as they might have a common interest.

Q Was there any time you received any information from Mr. Shippee you picked Up the phone and called Mr. Adams?

A No, only when I thought it was of such material significance as would warrant such a call.

Q The contents of such a memorandum as Plaintiff's

Exhibit 83 you would not regard that as indicating a telephone call to MR. Adams?

A I don't remember whether I would have called or not, Mr. MacCrate.

Q You received a number of communications during 1962 and 1963 from Mr. Shippee, did you not?

A I did.

Q Do you recall any one of them that you in fact reported upon to Mr. Adams or Mr. Learned or anyone else at Phillips?

A My conversations were almost exclusively with Mr. Adams but if something came up in the form of a memorandum or conversation that I thought was of significance or m ial importance, I would mention it to him in my next telephone call or his to me.

Q But you can't at this moment identify any occasion that you did?

A No.

Q Do you recall there came a time in the spring of 1963 when you received a letter from Mr. Shippee in which he said that Phillips had told him that they were not prepared to do anything further until he got a quota and asked if you would seek Phillips to reconsider their position? Do you recall receiving that letter?

A Not specifically, no, sir.

Q I show you Plaintiff's Exhibit 108 and ask you if that refreshes your recollection?

A I recall that Mr. Shippee would talk to me about a time lag or what I regarded as a time lag in getting information, both on engineering and marketing and asked me from time to time to mention to Phillips when I talked to them next, that they were expecting either engineering or marketing reports which had not come forward.

And I recall having mentioned a time or two that these conversations had been had, that they were looking for something from Phillips which had not yet had arrived, not yet been delivered.

Q Do you recall receiving the letter that is now before you, Plaintiff's Exhibit 108 of April 29, 1963?

A I have a vague recollection although I could not be very specific but I just have a memory of having received this particular letter.

Q Do you have any recollection of speawking either to Mr. Learned or to Mr. Adams after receiving that letter and asking if Phillips would reconsider?

A I don't think I ever asked anybody about reconsidering because I didn't know at that point if some-

thing had been turned down. What I was speaking to at the point was that they were asking for certain marketing and engineering data which had not been supplied on as timely a basis as they expected.

Q Your testimony that you have just given is after reading Plaintiff's Exhibit 108?

A Yes.

MR. FARRELL: Objection, your Honor.

THE COURT: Well, the jury watched the man read it and I don't know what the objection is. He is using it to refresh his recollection and he may do so.

Overruled.

Q On your direct examination, Mr. Anderson, there was inquiry about a meeting in your office in early July of 1963.

Did that meeting occur before or after Mr. Shippee's unfortunate aircraft accident?

A I think it occurred directly before because on the day of his accident everybody was telephoning around to try to find out how bad he was hurt.

Q About how long before the accident?

A I think a day or two as I recall it, two or three days.

Q Mr. Anderson, it appears in this record, and

I believe there is no dispute, that the aircraft accident occurred on July 2, 1963.

Now, I show you Defendant's Exhibit 331 and ask you if that does not refresh your recollection that any meeting in your office in July of 1963 took place after the aircraft accident?

THE COURT: Are you all agreed July 2nd was the aircraft accident?

MR. FARRELL: Yes, your Honor.

THE COURT: All right.

A This really doesn't mean anything to me.

Q Don't you recall that a meeting had been set up for July 2 and that Mr. Chapman was going to come to your office and was unable to come on that day?

A The only thing that I know definitely in my memory was that a meeting was held in my office. Mr. Chapman was there, Mr. Shippee was there, Mr. Coan was there. I don't remember who else was there because I specifically asked that Mr. Chapman and I have a few minutes of conversation privately and asked everybody to excuse themselves from my office.

I did hold that meeting privately with Mr. Chapm an and that is what fixes it in my memory.

Q What about that that you have just described to

us fixes it in July of 1963 as distinguished from any other time?

A The only other thing I can say is that it seems to be my memoy shortly thereafter or fairly close to that time is when Mr. Shippee had his accident and everybody was calling around to see how badly he was hurt. But I cannot be specific as to just say that I remembered that day. That meeting I can remember vividly but that day I would not try to define.

Q You have testified that there came a time when Mr. Adams and Mr. Learned visited you in your office in New York and indicated that Phillips wanted to go forward with the project independently; is that correct?

A That is correct.

Q You were aware, were you not, that Phillips had some of their board meetings and executive committee meetings held in New York from time to time?

A Yes, sir.

Q When Mr. Adams or Mr. Learned was here in New York they would sometimes drop in to see you?

A Mostly Mr. Adams.

Q But Mr. Learned was with him on occasion, was he not?

A I don't suppose Mr. Learned ever came with

Mr. Adams more than twice that I can recall.

Q But you do recall on this particular occasion the two of them came together?

A Yes, they were.

Q Now, in the course of telling you this, that Phillips was going to proceed independently, did they explain to you what had just taken place?

A The only thing that I can recall is that Mr. Learned and Mr. Adams came together and Mr. Adams had previously explained to me that he was going to involve other officers because it was not more thana year or so from his retirement and Mr. Adams simply said that he thought they ought to come and inform me that Phillips decided to pursue an independent course.

And I recall having said to him they should be discussing this with Mr. Shippee and I recall vividly as soon as they left my office, I walked straight into Mr. Wright's office and told him about the conversation.

I would say this was one of the short meetings I ever had with Mr. Adams and Mr. Learned.

Q What did you say to Mr. Wright?

A That he should call and notify Mr. Shippee and Mr. Willey I had this conversation with Mr. Adams and Mr. Learned.

Q Do you recall Mr. Learned discussing with you at that time any of the exploration activities of Phillips?

A No.

Q Do you recall any discussions at that time of what had taken place at a Phillips meeting that day?

A No.

Q Did Mr. Adams or Mr. Learned offer any explanation as to why they had decided at this particular time that they were going forward independently?

A I recall no explanatation.

Q What did you say to Mr. Adams and Mr. Learned?

A They should be discussing it with Mr. Shippee.

Q Did you undertake to speak immediately to Mr. Wright?

A I spoke to him within five minutes of the time they walked out of my office if not sooner.

Q How soon after that meeting did you see Mr. Shippee and Mr. Willey?

A I don't recall because I saw them with some frequency. They both lived at Greenwich and we rode together backwards and forwards from time to time.

Q Did youhave any discussion with them of this conversation?

A I don't recall, Mr. MacCrate.

Q Did you suggest to Mr. Wright any action that he should take in addition to informing Mr. Shippee and Mr. Willey when you immediately went in to see Mr. Wright?

A I suggested to him that when he informed Mr. Shippee and Mr. Willey that he might very well want to be in touch with others but I didn't suggest any course of action.

Q What did You understand was the effect upon your possible participation, your personal participation of this decision by Phillips to proceed independently?

A I don't suppose I had any immediate thought on that subject because it came to me as something of a surprise that they suddenly came in and announced they were pursuing an independent course.

Q In the fall of 1964, some 15 months after the air crash in which Mr. Shippee was involved, do you recall having discussions with Mr. Shippee and possibly with Mr. Wiley, Mr. Wright, about a satellite plant, proposal for a satellite plant in Puerto Rico?

A Yes, I have some vague recollections of it.

Q Did they present to you a memorandum outlining their proposal at that time?

A Yes, sir.

Q I show you Defendant's Exhibit 333 for identi-

fication and ask you if that is the memorandum?

A Yes.

MR. MacCRATE: I will offer that exhibit in evidence at this time, your Honor.

MR. FARRELL: No objection.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 333 for identification was received in evidence.)

(Exhibit read.)

Q Those initials are the initials of Mr. Shippee, are they?

A Yes.

Q You received this memorandum from Mr. Shippee and thereafter Mr. Shippee and your colleague, Mr. Wright and Mr. Willey went to Bartlesville and discussed such a proposal at Phillips, did they not?

A I was not present at the discussion.

Q Did you receive a report from them upon their trip?

A I had a verbal report.

Q And that they had visited with Mr. Learned?

A I understood the subject of the discussions covered the whole core proposal and this project and others, rather general discussion.

Q This discussion took place in January of L965, two months after this memorandum?

A Somewhere in that area.

Q What did they report to you as to what they had discussed with Mr. Learned?

A They had a general discussion of the core plant and this proposal, of oth er conversations hwich they had with other chemical companies which might use a portion of the product.

Q It was no more specific than that, that we talked about the core project?

A I don't recall any specific language used, Mr. MacCrate.

(Continued on next page.)

Q At any time in 1965 or 1966 did you discuss with anyone at Phillips the possibility that you might have a claim against Phillips?

A No, sir.

Q Did you ever discuss with Oscar Chapman the possibility that Mr. Shippee or others of the Shippee group might sue him?

A Sue Chapman?

Q Yes.

A I don't recall that kind of a conversation.

Q Mr. Anderson, I show you Exhibit D-221 and ask you if that refreshes your recollection regarding discussion with Mr. Chapman?

A Yes, it does.

Q What was the discussion, and perhaps you could tell us where it took place and fix the approximate time.

A It was in a telephone conversation, and after there was an obvious dispute between Mr. -- the Prudential Company and the Phillips Company, they prepared a draft, one or more, which I saw at the time, setting out what Prudential regarded as its claim for damages, and I do now recall that in one of those documents there was a claim that indicated involvement of Mr. Chapman, which prompted him to call me and subsequently write this letter.

Q And what did you say to Mr. Chapman?

A I don't remember my conversation specifically except that I told Mr. Chapman that I was trying to reconcile the differences between Prudential and Phillips so as to avoid litigation on their part.

Q Did you discuss with Mr. Chapman the merits of any claim against him?

A No, I don't recall it.

Q Thereafter did you have any further conversation with Mr. Chapman on this subject in July or August of 1966?

A There was a telephone conversation, perhaps more than one, that was instigated by Mr. Chapman, as I recall, to me, discussing the possible litigation which might take place between Phillips and Prudential.

Q And can you fix when that occurred or the circumstances that prompted the call?

A Frankly, no. It took place during a period after I had been notified by Mr. Shippee by a telegram which I think I received in Rome that Mr. Learned had said that Prudential had no interest in the project and after I returned to this country and I sought to reconcile the differences between them, and this went on for a matter of weeks and months, and during that period would be the

period in which I would have had my conversations with Mr. Chapman.

Q In addition to making claims against Phillips and Mr. Chapman, are you aware of any other individuals or of companies against whom any member of the Shippee group was making claims?

A I don't currently recall. There might have been in these documents, but I don't recall them.

Q Did Mr. Shippee ever discuss with you his claim against Mohawk Airlines?

A He might have. I have no recollection of it.

Q With respect, Mr. Anderson, to any share that you claimed in any equity participation in the project, did you at any time give a release of that interest to anyo n e?

A No, sir.

Q Did you ever make any assignment of that interest to anyone?

A No, sir.

Q Did your colleague, Mr. Wright, to your knowledge, make any claim after February 1966 against Phillips or Chapman?

A Not to my knowledge.

THE COURT: Is Mr. Wright alive?

THE WITNESS: Yes.

THE COURT: Was Mr. Wright your law partner?

THE WITNESS: No, your Honor. Mr. Wright was not a lawyer.

THE COURT: I see. What was his relationship with you?

THE WITNESS: He worked with me as an associate in my office on those particular projects with which we had a definite association. I had some which he was not involved in; he had some that I was nto involved in; we had some in which we were mutually involved. We officed in the same suite of offices.

Q Your retainer by Phillips was made on a monthly basis, was it not?

A Yes, sir.

Q And it was paid to the law firm of Roberts & Holland?

A Yes, sir.

MR. MacCRATE: I have no further questions.

THE COURT: Anything else from Mr. Anderson?

MR. FARRELL: I have one question, one or two.

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Anderson, the project that you mentioned on your cross-examination, the proposed petrochemical project

in Japan with Mitsuit, were you to receive an interest in that project?

A Yes, sir.

MR. FARRELL: Thank you.

THE COURT: Anything else from Mr. Anderson?

MR. FARRELL: No, sir.

THE COURT: How old are you, sir?

THE WITNESS: 65.

THE COURT: Thank you very much for coming. You are excused.

(Witness excuwed.)

THE COURT: At this time we will take a brief recess, members of the jury. You may withdraw to the jury room.

(Recess.)

MR. FARRELL: Your Honor, at this time I would like to read one question and answer from the deposition of Oscar Chapman, which was taken in this case.

THE COURT: Give the page number.

MR. FARRELL: I'm sorry. It is page 59-XQ(15) 14.

THE COURT: All right. Read the question and then read the answer.

MR. FARRELL: "Did you receive under separate

cover the two packages referred to in Defendant's Exhibit 78 for identification?"

78, your Honor, in this trial has been marked Plaintiff's Exhibit 112 for identification.

"If so, please produce the contents thereof, identify them and permit copies thereof to be annexed to your answers to these cross questions. Please state what action you took with respect to the two packages referred to in said Exhibit 78 for identification.

"A I remember receiving copies of a presentation referred to in Defendant's Exhibit 78 for identification. I reviewed the contents thereof and took no action with respect to the presentation contained therein. A copy hereof is annexed hereto."

And I offer the letter and the document which Mr. Chapman submitted in response to that cross question, which has been marked at this trial as Plaintiff's Exhibit 223 for identification.

MR. MacCRATE: No objection, your Honor.

THE COURT: It will be received in evidence.

At this time, members of the jury, I will instruct you that the law permits under certain circum-

stances, at least one of which is applicable here, for the party desiring to introduce testimony to read interrogatories and cross-interrogatories and responses which a witness has previously made under oath, usually in another community.

What has been read here are interrogatories and responses proposed to Mr. Chapman, outside the State of New York, more than a hundred miles away, and you may treat those questions and answers with the same force and effect as if Mr. Chapman had been brought here in person and had taken the stand and had testified and been asked those questions and given those answers.

(Plaintiff's Exhibits 112 and 223 were received in evidence.)

(Continued on next page.)

MR. FARRELL: Mr. Thomas Young.

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THOMAS R. YOUNG, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q MR. Young, will you please tell me your business background?

What is your profession?

A I am a chemical engineer and have been practicing in chemical engineering for a good many years. Professional engineer in the State of New York as well as a few other states.

Q Turning your attention to 1962, what was your position at that time?

A At that time I was gice-president of Houston Chemical Company.

Q What was the business of Houston Chemical Company?

A Chemical business.

THE COURT: A manufacturing concern?

THE WITNESS: Manufacturing concern, petro-chemicals.

Q How long prior to 1962 had you been vice-president of Houston?

A Since mid-1960 when Houston Chemical was formed.

Q Prior to that, what was your employment?

A A partner in the firm of Singmaster & Breyer in New York City.

Q What is the business of Singmaster & Bryer?

A Chemical engineering and construction.

Q How long had you been a partner at Singmaster & Breyer?

A I was with Singmaster & Breyer about 14 years and a partner about eight years. I am not sure of the exact numbers, six or seven.

Q Prior to going with Singmaster & Breyer by whom were you employed?

A duPont Company.

Q Turning your attention to October 1962 were you advised of a proposed petrochemical project in Puerto Rico?

A Yes, sir.

Q Tell me who advised you and the approximate date?

A Nathan Shippee and the date was some time in October. I keep a little pocket notebook that I think you

have made copies of and maybe if I look at that that will refresh my recollection and I could give you the exact date.

THE COURT: Mark it for identification.

MR. FARRELL: This has not been marked.

(Plaintiff's Exhibit 225 was marked for identification.)

Q Mr. Young, I show you Plaintiff's Exhibit 225 for identification and ask you if that refreshes your recollection as to the time that you were advised of the proposed project?

A Yes, sir. October 10, 1962. Mr. Shippee brought --

MR. MacCRATE: I object to his reading out of the document.

THE COURT: Yes, I will sustain the objection. He is merely using it to refresh his recollection as to the date, and that is all that he was asked.

Please put it aside until you are called upon to refer to it again.

THE WITNESS: I was not reading from it, your Honor.

THE COURT: I don't say that you were but October 10 is the date.

THE WITNESS: yes.

Q Do you recall what happened on that date?

A Yes. Mr. Shippee came to my house and brought a copy of a document that had been prepared for a Puerto Rican oil refinery by others who had dropped out of the picture and he had been asked by Jack Coan through E.M. Warburg & Company if Prudential could handle such a project.

And he asked me if I would look at it and give him my thoughts in the next day or two.

Q I show you a document marked Plaintiff's Exhibit 213 for identification and ask you if that is the document that you referred to in your last answer?

A Yes, it is. I can even see some of my little handwritten notes.

MR. FARRELL: I offer this, your Honor.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Young, is this document, Plaintiff's Exhibit 213, the very copy that Mr. Shippee brought to your house on or about October 10, 1962?

A It is certainly a copy that I worked with because I can see my penciled markings on it. Whether this is the same copy I had at that day I have no way of knowing but

it is the same substance.

Q Did Mr. Shippee indicate from whom he had received the document?

A I believe he told me it was from Jack Coan.

Q Did he indicate the individuals who had put together this brochure?

A I don't think he indicated the individuals. I think he said that -- I don't think we went into that detail at all at that time.

It was more a question could Prudential take this and proceed with it, this basic idea, and produce with it.

I think he had been asked by the Warburg people whether Prudential could do this.

Q You have referred to your handwriting on this page of the text and there is a notation over on the left-hand side. Is that in your handwriting?

A That is correct.

Q What does it say?

A At a much later date when we were preparing a report we used certain parts of this document and these are notes that I made as to parts that could or could not be used and that we would use a different approach to the project.

Q There is an indication over in the left-hand side that the first three paragraphs owuld be replaced with something that Mr. Shippee was preparing?

A I think it was something that had been prepared. I think we prepared it together if I am correct.

Q Something that you and Mr. Shippee had prepared together?

A I believe so.

MR. FARRELL: Your Honor, I think this is beyond voir dire.

THE COURT: I suppose it is permissible to establish what the status of the document was at the time that he first was shown it.

Q Up through page 23 does the document contain all of the pages that were in it when you first received it?

A Damned if I know.

THE COURT: Ordinarily I would ask you not to be profane.

THE WITNESS: Excuse me, I am sorry.

THE COURT: You are trying to tell us it is a long time ago.

Are they numbered?

Q The pages are numbered, are they not, 1 to 23 consecutively?

A They certainly appear to be. I see 23 and some numbers in between.

Q Is Appendix A the certificate of incorporation in the volume when you received it?

A I certainly think so but at this point, what is it, 15 years? To remember prec isely whether it was there or not.

Q But it was not something that you have added to the book?

A No.

Q With respect to Appendix B, was it also in the book when you received it?

A I assume so. I think these were all in there.

Q And the same thing is true of Appendix C?

A Yes.

Q Similarly with respect to Appendix D?

A Yes.

Q With respect to Appendix E, was something in there when you received it?

A I presume so.

Q Can you tell us what was in this document when you received it that is no longer contawined under the tab Appendix E?

A No, I cannot. I could only guess.

Q Was Appendix F in the cocument when you received it?

A I believe it was. I really don't know. I thought the document was complete when I had it but there may have been some things missing.

Q In addition to the missing Appendix E, do you know of anything else that is missing from the volume as you received it in 1962?

A There were some technical documents that had been prepared By United Oil Products --

Q Universal Oil?

A Universal Oil Products, yes, and I assume they might have been the Appendix E that is missing.

Q Did you remove Appendix E from this volume?

A No, sir, I did not remove it. Someone else must have.

MR. MacCRATE: Your Honor, I object to its admission in evidence unless the missing appendix is explained.

THE COURT: I will take it however subject to a cautionary instruction that it appears that his exhibit as offered is not complete, that Exhibit E is missing. But it may be received for whatever weight and consideration

the jury believes it is entitled to.

(Plaintiff's Exhibit 213 for identification was received in evidence.)

BY MR. FARRELL:

Q Mr. Young, thereafter did you work on the petrochemical project?

A Yes, sir.

Q What did you do?

A I think we first looked --

Q No more we. What did you yourself do?

A I looked at this report and joined with others at a meeting in E.M. Warburg's office a couple or days later.

Q Can you give us the date of that meeting?

A Yes.

THE COURT: Haven't we had that meeting with two witnesses already?

MR. FARRELL: Yes, Your Honor.

THE COURT: Will you come to the side bar.

(The following took place at the side bar.)

THE COURT: My understanding is that nobody from Phillips nor Anderson was at that meeting and I don't think I need to take cumulative evidence. No one questioned the fact of the meeting being held or the fact they

had a meeting or what they did there. This is the third time around on this meeting.

MR. FARRELL: I'm just trying to get in the record as I think I should the fact that Mr. Young and Mr. Willey and others did work on the project.

THE COURT: He can tell that he attended the meeting. The jury heard all about the meeting. Let's not go into the details that are not in issue. If legitimately they are in issue you may go into them if they are disputed as to what happened, you may go into that also but as to the Warburg meeting there is no argument, am I correct?

MR. MacCRATE: There is no argument about it.

THE COURT: All right, let's move the case along.

(In open court.)

BY MR. FARRELL:

Q Mr. Young, I will not ask you the details of the meeting at Warburg, just tell us if you can who was there. Are you referring --

Q Refreshing my recollection from my notes.

I have Jack Coan, Omega Management, Peter Berlind-- these are names that I have in my notes here. I'm not sure they were at that meeting.

William Grainger. I am not sure they were all there.

THE COURT: Don't read them if they were not at the meeting. We had this meeting from two other witnesses, Mr. Farrell, and we don't have to go into any details.

THE WITNESS: Minutes of that meeting were written by E. M. Warburg anyway.

Q Mr. Young, after the meeting at Warburg, did you continue to work on the project?

A Yes.

Q Did you have a meeting with Mr. Anderson on or about November 9, 1962?

A Yes, in Mr. Anderson's office.

Q Tell us where that took place?

A In Mr. Anderson's office.

Q Who was at the meeting?

A Shippee --

MR. MacCRATE: I object to the witness just reading from this.

THE COURT: If he doesn't remember the proper procedure is for the witness to state I can't remember and if necessary he can maybe look at the diary to refresh his recollection.

In the meantime don't look at the diary until

counsel asks you to do so. He asked you who was at this meeting.

A Mr. Shippee, Mr. Willey, Mr. Blinken of E.M. Warburg, a man who was the former president of Gulf Oil who was there and I think also a man from Kuhn Loeb was there and I think it was at that meeting that we discussed --

Q Wait, I will come to asking you that.

First who was there?

A That is all I remember.

Q Will you look at your diary and tell me whether you can see where anyone else was there if it refreshes your recollection that anyone else was there?

A All it does is give the name of the Kuhn Loeb man, Mr. Shea, Peter Shea dnd Mr. Griswold who was the former Gulf man and consultant to Kuhn Loeb.

(Continued on next page.)

Q Now, can you tell me what took place at the meeting; tell me the content of the discussion and who said what.

A Well, Prudential or we at Prudential --

THE COURT: No more "we." No more "Prudential." I want to get testimony about people.

Q Who said what?

A Okay. Who said what.

Mr. Anderson suggested that Phillips be selected from a list of oil companies that had been presented to him or had come up in the discussion, and I'm sorry, I cannot say who had brought which names up, your Honor. I'm sorry. There was presented a list of possible oil companies, and Mr. Anderson felt that Phillips was the best oil company to provide for material or crude oil and to market the finished products for basically three reasons.

First was that they had a considerable amount of crude in Venezuela, which was nearby; they were the only major oil company that did not have any East Coast refinery; and they also were highly competent in the field of petrochemicals with which this refinery was to be associated. The refinery was really to be a feed plant for a petrochemical complex in Puerto Rico as against being merely anothery refinery for the import of more oil to

the United States.

Q Was there anything else said at that meeting that you recall, and if you recall, tell us by whom.

A Yes. After that there was general agreement --

THE WITNESS: I hope this is all right, your Honor.

MR. MacCRATE: Objection, your Honor.

THE COURT: Well, it is not all right, I'm afraid.

Just tell us who said what to whom as best you can recall.

A Well, after that -- the general agreement is necessary in the course of events.

Q Just tell us what they said.

A Well, I don't remember who said what is the problem after that, except that after someone or several agreed that --

Q Did they say, "Yes, call Phillips"?

A Yes, that's correct, but I don't know what specific person said that. I think it was a general discussion and agreement, and this often happens in a group meeting.

Mr. Anderson then went to a little private officehe had off of his main office and called his friend --

Q Were you with him when he went into his private office?

A I was not there. He went in to call --

Q You did not go in with him to the private office?

A No. He went in and said -- or he said he was going to call Mr. Adams, and he went into a private room.

Q Did he emerge from the private room and report --

A He emerged from the private room, yes.

Q Then what did he say?

A He said, "Phillips thinks it's fine and they'll send you a letter."

Q Now, thereafter did you continue to work on the proposed project?

A Yes.

Q And can you tell me what you did?

A Yes. After receiving a letter from Mr. Learned, the president of Phillips -- I think that is one of the exhibits we have here -- we worked together with the --

THE COURT: No more "we", please. He asked you what you did.

A I worked together with members of the Phillips organization to defelop a oil -- develop a request for an oil import allocation.

Q Well, after the meeting with Mr. Anderson that

you have described, did you call Mr. Learned of Phillips?

A I did some time later. I don't remember exactly when. I would have to look at my notes.

Q Would you look at your notes and see if it refreshes your recollection as to when you called Mr. Learned?

A On the 19th of November.

Q And can you tell us what you recall of the content of the discussion with Mr. Learned?

A I asked him whom we could contact in the Phillips organization for the development of this oil import allocation request, and he originally designated a Mr. Conn who was manager of the Phillips New York office.

Q That is what he said in that conversation?

A Right.

Q Subsequent to that meeting did you go to Puerto Rico on the project, working on the project?

A Yes.

Q Do you know when that was about?

A It was late November, I believe. I would have to look in my notes to see the exact date.

Q Would your notes give you the exact date?

A I think probably. I didn't put everything in my notes, but I think I would have put that in there.

A Yes. Went to Puerto Rico on the 28th and was there on the 29th, the 30th and the 31st of November.

Q Now, in Puerto Rico did you meet representatives of the Puerto Rican Economic Development Administration?

A Yes.

Q And whom did you meet at that time?

A The fellow -- I think his name was Van Hyning or Van -- I think it's Van Hyning I met. There was a Miguel somebody or other. I don't remember what his name was.

Q Now, while you were in Puerto Rico did you go on a site selection tour of the island?

A Yes.

Q And who arranged that?

A I think that was Mr. Van Hyning arranged that.

Q Did he accompany you on the tour?

A I believe he did.

Q Did you at that time select a site for the proposed petrochemical project?

A Yes.

Q And what was the site?

A It was a site just outside of Mayaguez on the west end of Puerto Rico.

Q Did you hold any other meetings in Puerto Rico with other representatives of the EDA than Mr. Van Hyning?

A Not with any other representatives of EDA, no, sir.

Q Did you hold meetings with Mr. Shippee?

A Yes.

Q Now, in the latter part of November, prior to your trip to Puerto Rico, did you meet with MR. Conn whom you referred to in one of your previous answers?

A I met with Mr. Conn. I don't recall whether it was before or after the trip to Puerto Rico -- well, I take that back. I do remember. It was before my trip to Puerto Rico.

Q Where did this meeting take place?

A In his office.

Q And that is in downtown New York City?

A Yes.

Q And do you know who else was there?

A He brought in one or two other people. I think their names were Jackson and Page.

Q Were these representatives of Phillips?

A But I'm not positive.

Q These were representatives of Phillips?

A Yes. Mr. Conn had not been briefed by Mr.

Learned at the time, so that he was at a bit of a loss as to what to say'

Q And did he tell you that Mr. Jackson and Mr. Page would meet with you with respect to the project?

A I don't think he made any commitments whatsoever at that time because he wanted to check back and would let us know at some later time.

Q Well, thereafter were you advised by someone at Phillips who you were to meet with in connection with te project?

A Yes.

Q And who advised you and who were you to meet with? Who advised you that there was a representative of Phillips that you should meet with?

A I'm not positive, but I think it was Mr. Learned. And he said that Dale Fischbeck was the man to -- would be the key man in talking to us and working with us on the project --

Q Now, during the month of December --

A With me.

Q Did you meet with representatives of the EDA?

A The month of December? Yes, in New York City, I met with Mr. Diaz-Hernandez and with, I think it was Ivan Irizarry. I believe those were the only two, although

there may have been others.

Q And did you thereafter continue to work on the project?

A Yes.

Q What did you do?

A We tried to develop the project with help from the Phillips people. We had help from Mr. Jackson, from Mr. Fischbeck, I believe from Mr. Smith, and we worked together for the next several months to develop this request for an oil import allocation.

Q During your work on the request did you make any changes in the proposal as it had been first presented to you?

A We changed the --

MR. MacCRATE: Objection, your Honor.

THE COURT: I think the exhibit number of the proposal ought to be included in the question.

MR. FARRELL: No, I mean the oral proposals. I don't mean --

THE COURT: You will have to establish from this witness what oral proposals there were and then what changes he recommended and to whom.

MR. FARRELL: All right.

THE COURT: I thought you were dealing with the

Coan brochure.

MR. FARRELL: I'm not limiting it to that.

THE COURT: Frame the question again.

MR. FARRELL: All right.

Q At the time this project was first brought to your attention, did Mr. Coan describe the project?

A When the project was first brought to my attention, Mr. Coan was not present. Mr. Shippee brought the document or a very similar document to me to show me what had been done before or do I misunderstand your question?

Q Did you talk to Mr. Coan about this project?

A Yes, indeed.

Q And didn't he at those discussions give you information as to the proposal and the stages of the proposal at that time?

A Yes.

MR. MacCRATE: Objection, your Honor.

THE COURT: I will allow him to answer it yes or no, but let's get right down to the bedrock here. There came a time where somebody explained the project to this witness and, as I understand, he got it in the first instance from Mr. Shippee by means of a brochure which has been marked in evidence.

What is the number of it?

MR. FARRELL: That was 213.

THE COURT: P-213. Now, if that is not so, bring it out and clarify it. Find out what is so.

Q Was Plaintiff's Exhibit 213 the only information you got with respect to the status of the project when it was first called to your attention?

A When it was first called to my attention, yes, but subsequently there were other conversations which develop the project to a greater degree.

THE COURT: With whom?

THE WITNESS: With Mr. Coan, with the EDA people, with the Phillips people and during preparation of anything of this nature, it is natrually a development thing, and you have discussions with quite a large number of people and you investigate several different approaches.

The approach that Mr. Shippee and I took --

THE COURT: That is a sufficient answer.

Q Now, Mr. Young, did there come a time when you proposed changes to the project, as it had been explained to you up to that time?

A Yes.

Q And what were those changes?

THE COURT: First, when did he propose them and

to whom, if you will.

MR. FARRELL: All right.

Q When did you propose them and to whom?

A I proposed them in a redrafting of the report, and there it was a different approach to the report. Instead of being the approach that had been taken in the past, it was an approach of a true petrochemical feedstock plant, dedicated to preparing feedstocks to the satellite plants that would be developed around the refinery, which was a necessary first step to produce these feedstocks.

Q What were your proposals, Mr. Young?

A The proposals in there were to bring in basic chemicals, sulfur, particularly, from crude -- most crudes contain sulfur, and one of the approaches was to remove sulfur from the crude stream. Another approach was to build a tetraethyl lead plant, lead alkyl additive plant, because Puerto Rico was then importing several million pounds a year of lead anti-knock fluid for the gasolines that were being made in Puerto Rico.

There was also a submission to the EDA that I put in the report which said we would use what we called a quasi-public utility or a first refusal type approach so that if any satellite chemical company wished to locate near this core refinery, the core plant would be dedicated

to give that satellite the first refusal of the product. The product would not be sold elsewhere.

Q In the conversations with Mr. Coan and others, when you were brought into the project, Mr. Young, was it stated that it would be necessary to have a commitment from a chemical company in order to proceed with the project?

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained.

Q Did Mr. Coan say that it would be necessary to have a commitment from a chemical company in order to proceed with the project?

MR. MacCRATE: Objection, your Honor.

THE COURT: Unless he fixes the time or place. Is that the objection?

MR. MacCRATE: I think it is leading. He hasn't gotten into the discussions with Coan at all.

THE COURT: All right. It is leading. Please elicit any discussions he had with Mr. Coan by establishing the time, place, who was present, what Mr. Coan said and what he said.

Q Do you recall any discussion with Mr. Coan in the early part of -- in October, November of 1962?

A Yes. I recall discussions. There was a discussion where Mr. Coan wanted us to meet with Mr. Lewis

of Monsanto Chemical Company. Mr. Willey and I met with Mr. Coan and Mr. Lewis with the intent of arranging for an agreement with Monsanto Chemical Company for the purchase of a by-product stream of a high wax content.

Q What did Mr. Coan say to you in his discussions with you in connection with a petrochemical company?

A Mr. Coan said that an agreement of this nature would be a help to the project. I think --

THE COURT: No, not what you think. Just the conversation.

A I replied that it was rather naive to have real agreements prior to the establishment of the core facility, and it was on this basis that we changed the approach in the report.

Q How did you change the approach?

A We did not --

THE COURT: No more "we" testimony, gentlemen. I won't take it. I am so tired of "we this" and "Prudential that." Say what people did, what you did or someone else did in your presence. No more "we" testimony. You tell what you did, if anything.

THE WITNESS: I'm sorry. I was the one who did the actual writing of the report from the Prudential standpoint. Unfortunately, when I am working with an

organization, I use the term "we," sir.

THE COURT: I understand that, but we have had everybody here testifying. We have to find out what you did, not what the group of people did.

THE WITNESS: That is what I did, and that is the approach that I took.

Q What was the approach that you took?

A That it was not necessary to have a prior agreement with a chemical company in order to make this a viable contract, viable oil import request.

Q Now I am going to show you a document that has been marked Plaintiff's Exhibit 214-B for identification and ask you if that is your writing.

A No, that is not my writing.

Q Do you know whose writing that is?

A No, sir. I don't know whose writing that is.

Q Now I show you the document that has been marked Plaintiff's Exhibit 214 and ask whether this is the report that you referred to in your prior answer which you say you wrote.

Say it so the jury can hear you and the reporter can hear you, for the record.

Is that the report you are talking about in your prior answer?

A The answer is yes. It is not the final -- I don't think it's the final report.

Q But this is the --

A This is the first draft of the report.

Q Now, Mr. Young, will you point out in that report the proposals that you made with respect to the project which differed from the proposal that had been brought to you?

Let me call your attention to --

MR. MacCRATE: I object, your Honor. He is leading the witness.

MR. FARRELL: All right, do it that way.

A It's very difficult for me at this time to go back to remember specifically which things I --

Q Maybe I did it the slow way. Can you tell me what proposals you or Mr. Shippee or Mr. Willey --

THE COURT: No, nothing about Mr. Shippee.

MR. FARRELL: If he did it in his presence?

THE COURT: No, I will not take any more of these "we" answers or compound questions with three different people in it. Find out what this witness did.

MR. FARRELL: All right.

Q Tell me what proposals you made with respect to the project which differed from the project as it had been

proposed to you originally.

A I think I took a different approach to the project. It was not an --

Q Tell us the different approach, Mr. Young.

A Well, the different approach was -- I think I just went through that.

THE COURT: Never mind what you think. Have you conferred with Mr. Farrell before you came here today?

THE WITNESS: I have conferred -- yes, sir.

THE COURT: When did you confer with Mr. Farrell?

THE WITNESS: Yesterday and the day before.

THE COURT: Now please listen to the questions and answer them directly and simply.

Ask another question, Mr. Farrell.

Q Mr. Young, will you tell me the difference in approach that you just mentioned?

A The difference in approach was that this was to be a plant to produce petrochemical feedstocks for satellite plants. It was also dedicated that it would do this on a first refusal basis to anyone, any plant that would come in there.

It further was to supply certain basic chemicals and to either directly make sulfur and extract sulfur from the crude. It was also either directly to make a caustic

chlorine plant or interest someone else in making a caustic chlorine plant. It also had in mind a lead alkyl anti-knock plant for the island.

Q Would the project be flexible with respect to the amounts of petrochemicals it could produce?

A The answer is yes. That is the type of flow sheet that was included as a typical type flow sheet.

Q What does that mean?

A A flow sheet --

Q Not flow sheet. Flexible. What do you mean?

A Flexible means that you could withdraw --

MR. MacCRATE: Objection.

THE COURT: I will allow it.

A That you could withdraw almost any side stream from the refinery that is required for a satellite plant if and when it would be built.

(Continued on next page.)

Q I ask you first whether in January of 1963 you attended a meetin at Arthur D. Little or at EDA with a representative of Arthur D. Little?

A Yes.

Q Do you know the approximate date of that meeting or can you find it if I show you?

A I think it is in my notes. This would be the next year I guess.

Q You don't recall the date?

A I don't recall the date but I think I have it in my notes.

THE COURT: Is there any dispute about this meeting?

MR. FARRELL: I want to introduce an exhibit. I'm just preparing to do that.

THE COURT: All right.

MR. FARRELL: There is a dispute anyway.

THE COURT: I am permitting it.

A January 4 was the meeting.

THE COURT: What year?

THE WITNESS: Of 1963.

Q Now who was present at the meeting?

A There were I think two representatives from Arthur D. Little, Shippee and I from Prudential; Ivan

Irizarry from EDA and possibly others.

Q Do you recall the discussion at that meeting and tell me if you do who said what?

MR. MacCRATE: Objection, your Honor.

THE COURT: Well, I will sustain the objection.

Q Mr. Young, you told me where and when the meeting took place. Will you tell me the content of the discussion at that meeting?

THE COURT: I have sustained the hearsay objection here but he can testify now how long the meeting was.

MR. FARRELL: Excuse me, your Honor.

THE COURT: What took place, what they discussed but not who said what at this meeting.

MR. FARRELL: If your Honor please, Mr. MacCrate cross-examined Mr. Shippee on who said what by showing Mr. Norton's deposition.

THE COURT: All right.

MR. MacCRATE: My cross-examination was directed to what Mr. Norton of EDA said to Mr. Shippee in March of 1963, two months later.

THE COURT: Gentlemen, you should not discuss this issue in front of the jury. If there is any further argument I will excuse them.

MR. FARRELL: I don't think we have to pursue it.

Q Tell me what topics you discussed, Mr. Young?

A The topic that was discussed was Arthur Little's ability to carry out the project.

Q What were they told --

A Not to carry out the project, to make a report as to the feasibility of the project.

Q Did you describe the project to them?

THE COURT: Yes or no.

A Yes.

Q Mr. Young, I show you Plaintiff's Exhibit 31 for identification and ask if that is your handwriting on that letter?

A Yes, it is.

Q Do you know from whom you received this letter?

A Yes, I received that letter from Mr. Coan's files.

Q Mr. Coan gave you the letter?

A Mr. Coan gave me the letter.

Q Turning your attention to the handwriting on the bottom and left-hand margin, did you write that at the time of the meeting with Arthur D. Little?

A Yes.

THE COURT: You had that in front of you during

the meeting?

A Yes.

Q Does that refresh your recollection as to anything said at the meeting?

A I should probably read it.

Q Don't read it just tell me if it refreshes your recollection first.

A Yes.

MR. MacCRATE: Your Honor, we are now addressing conversation at that meeting.

THE COURT: I suppose we haven't yet but we are getting very close to doing so.

Q Does this refresh your recollection as to the subject of the discussion with Arthur D. Little?

A Yes.

Q What was the subject of discussion?

A As I testified before I and others described the project to Arthur D. Little and what the proposal was.

Q You described -- when you say you described the project to Arthur D. Little, you described what you had just testified previously?

A Yes.

Q Tell me what you described?

A That this was to be a core refinery to produce

petrochemical feedstocks on a back-to-back arrangement with the satellite plants.

Q Anything else?

A Very likely.

Q I call your attention to the handwriting again and ask you if that refreshes your recollection of anything further told to Arthur D. Little?

A Yes, with a binding commitment in the charter as far as the back-to-back agreements.

Q What back-to-back agreements?

A These would be back_to-back agreements with satellite plants where we would provide -- where petrochemical streams would be provided.

Q After the meeting with Arthur D. Little did you have a meeting with representatives of Phillips?

A Yes.

Q Can you tell us without looking at your diary the date of the first such meeting?

A I cannot tell you without looking at my diary.

Q Will you refresh your recollection from the diary, please?

A The next note in my diary is on January 8, a meeting with Dale Fischbeck.

Q Do you recall where that meeting took place?

A I just saw something, it was not a meeting. I was talking about the following week I see so he was not there.

Q Who was that meeting with?

A It wasn't a meeting.

THE COURT: Let's talk about meetings. The attorney asked you about meetings and please concentrate on the question and let's get this trial moving along here, please.

When was your next meeting with anyone connected with Phillips? Can you suggest a date, Mr. Farrell, so I am not here all afternoon? Give him a date or tell him where to look.

MR. FARRELL: There was a meeting on February 20.

THE COURT: Look at February 20 and see if that doesn't refresh your recollection.

MR. FARRELL: There is a meeting on February 15.

THE COURT: Frame another question.

Q Do you recall a meeting of February 15, Mr. Young?

A I'm trying to read the notes and it is very poor -- yes. That was Fred Jackson of Phillips had arranged at Mr. Willey's request to send a sample of either

crude or wax cut to Mr. Lewis of Monsanto.

Q Do you recall meeting with Mr. Fischbeck on February 20?

A Yes.

Q Can you tell us where that meeting took place?

A Yes. That took place in either Mr. Coan's office or Mr. Fischbeck's office.

Q Can you tell us who was there?

A Only by looking at my notes again.

Q Would your notes refresh your recollection as to who was there?

A Yes.

THE COURT: Will counsel approach the side bar, please.

(The following took place at the side bar.)

THE COURT: Has this witness been deposed in this case?

MR. FARRELL: Yes, your Honor.

THE COURT: This delay is infuriating.

MR. FARRELL: I apologize.

THE COURT: Why don't you read his deposition to the jury.

MR. FARRELL: I didn't take his deposition, Mr. MacCrate did.

THE COURT: Didn't he ask him everything as far as --

MR. FARRELL: No, he didn't ask him.

THE COURT: I don't want this delay.

MR. FARRELL: I am sorry, your Honor.

THE COURT: You had time to interview him.

MR. FARRELL: I spent two days with him.

(In open court.)

BY MR. FARRELL:

Q Can you tell us about the meeting of February 20, Mr. Young?

A Yes, that was in Mr. Coan's office and present were Mr. Lewis of Monsanto, Mr. Fischbeck and Mr. Shippee.

Q Can you tell us the substance of the discussion?

A I don't recall the details except the notes that I wrote in here which were to the point that Mr. Chapman had advised that he would like to -- told me on the telephone that he would like to reduce the quantity of petroleum products and at that meeting Mr. Shippee asked could we import something that had -- was a partially refined product, at which point Mr. Fischbeck thought that -- Mr. Fischbeck said that that sounded feasible.

Q Did Mr. Shippee mention the partially refined product?

A I don't recall whether he did or not.

Q Do you know what partially refined product he was talking about?

A Naphtha.

MR. MacCRATE: I object.

THE COURT: Sustained and the jury is to disregard the answer. Strike out the answer.

Q Did Mr. Fischbeck refer to the partially refined product?

A I believe so.

Q Do you know what he said?

A Not specifically at this point. As you realize, it is a long time ago.

THE COURT: How old are you, sir?

THE WITNESS: 61.

Q Do you recall a meeting with MR. Fischbeck on March 8, 1963?

A Again I would have to take a look.

Q Would you do so?

A Yes.

Q Can you tell me who was at the meeting?

A I think I was there alone with Mr. Fischbeck. I don't think anyone else was there.

Q Can you tell me where the meeting took place?

A It took place in Mr. Fischbeck's office.

Q Can you tell me the content of the discussion?

A Regarding marketing outside the quota. I think the best of my recollection, we talked about a fuel supply depot for tankers and for the Army and naval supply vessels.

Q What did Mr. Fischbeck say in that connection?

A I don't recall the details.

Q Did he say that he prepared a report?

A At some time during working together he definitely offered to prepare the marketing part of the report.

Q By marketing part of the report you mean the part of Exhibt 214, is that what you mean by the marketing part of the report?

A The report being the request for an oil import allocation.

Q Do you recall a meeting or discussion with Mr. Fischbeck on March 27 and if you don't will you please refer to your notes to refresh your recollection?

A Yes, a meeting with Mr. Fischbeck, Mr. page and Mr. Smith of Phillips. Also present was Mr. Harry Turputson of Brown & Root and Mr. Shippee and me from Prudential.

Mr. Chapman had been very anxious for us to talk to Brown & Root --

MR. MacCRATE: Objection, your Honor.

THE COURT: I will strike out Mr. Chapman had been anxious.

A Mr. Chapman asked me to talk to the Brown & Root people as to the possibility for being a construction contractor for this facility.

Q Do you recall where the meeting took place?

A Yes. It took place in Mr. Fischbeck's office.

Q Do you recall the contents of the discussion of that meeting, Mr. Young?

A It was very general discussion as to Brown & Root's qualifications for building a refinery in Puerto Rico.

Q Anything further?

A No, sir.

Q Do you recall?

A No, sir.

Q Did there come a time, Mr. Young, when you were advised that Phillips would not prepare a marketing report?

A I don't think I was advised specifically. I think it just happened the marketint report never appeared.

Q On April 23 did you have a telephone conversation with Mr. Page?

A Yes.

Q Can you tell us how tht telephone conversation came about?

A I have written in my notes that Frank Page said that -- I put quotes around it --

Q Does this refresh your recollection as to what he did say?

A Yes, Bill Keeler, executive vice-president told Oscar Chapman if and when we got an allotment we can then go to work, which ought to be about April 1 to 5. I left a message for Mr. Fischbeck to call me regarding that. I also caled Jack Coan on the same day and he said he had not heard from Mr. Chapman.

Q I don't need the conversation with Mr. Coan. Thereafter did you speak with Mr. Fischbeck?

A Yes.

Q Can you tell me the date? Would your diary refresh your recollection as to the date?

A Yes, on May 1st.

Q Can you tell me the content of the conversation?

A The words I have here are "Not cleared to Adams unless allotment. Someone supposed to have told

Chapman."

Q Is that what Mr. Fischbeck told you?

A That is what he told me as against -- well, Mr. Page said previously as you recall Mr. Keeler told Chapman.

Q Did you continue to work on the report as you call it, the request for an allotment?

A Yes, and sent the non-market survey part to Phillips for them to include the marketing section.

Q Let me show you Exhibit 215.

Is that a final draft of the brochure as of April or May 1973?

MR. MacCRATE: Objection, your Honor, about it being the final draft.

Q Is this the condition that the report was in as of April or May of 1963?

A Yes.

Q Did you attend a meeting at Mr. Anderson's office in early July or thereaabouts, Mr. Young?

A Could I look again?

Q Yes.

A I have a crossed-out meeting scheduled for July 2 and I believe that was held a day or maybe either very late in June.

Q The 1st of July or very late in June?

A Yes. There is some reason that the meeting had been set up to meet with Mr. Chapman because we were having --

Q Just tell us, in any event, the original date was changed?

A Yes, the original date was changed.

Q Could you tell us who was at the meeting?

THE COURT: Have we fixed the time of the meeting, the place and the date?

MR. FARRELL: He said late June or early July, that is his best --

THE COURT: You have nothing in the diary about this meeting?

THE WITNESS: That the meeting was scheduled for the 2nd of July, your Honor.

THE COURT: You have this crossed out?

THE WITNESS: Yes, and my recollection is that it was held just prior to that.

THE COURT: But you have nothing in your diary about this particular meeting?

THE WITNESS: No.

THE COURT: What you are going to tell us about this meeting is from memory?

THE WITNESS: That is correct.

THE COURT: How do you remember this meeting without need to refer to a document?

THE WITNESS: The same way which I remember the other meeting I attended in Mr. Anderson's office when he called Mr. Adams.

THE COURT: All right.

Q Can you tell us who was at the meeting?

A Mr. Chapman, Mr. Shippee, possibly Mr. Coan, I am not sure; Mr. Anderson.

Q Do you recall the contents of discussion at that meeting?

A I recall that Mr. Anderson and Mr. Chapman stepped into -- excused themselves and stepped into Mr. Anderson's private office and when they came out Mr. Anderson said that he would handle Prudential's relations with Phillips and Mr. Chapman would follow through on the oil import allocation in Washington.

Q Do you recall anything else about that meeting?

A No, sir.

Q Subsequent to that meeting did you continue to work on the petrochemical project, Mr. Young?

A I did not continue to work on the report. I did do some slight investigations of possible satellite plants

but this was an interim period at this point, waiting for the oil import application approval.

Q Turning to January 1966, do you recall a meeting with Mr. Johnstone?

A Yes. I don't remember it was January 1966 but there was a meeting with Mr. Johnston, I think one other gentleman.

Q One other gentleman from Phillips?

A Yes. Mr. Shippee.

Q Can you tell me the content of the discussion at that meeting?

A Yes. Mr. Shippee discussed with Mr. Johnstone the possibility of Prudential setting up a satellite plant in connection with the refinery plant to be built in Puerto Rico.

Q Did you ever attend a meeting with Mr. Johnstone, Mr. Young?

A There was a subsequent meeting.

Q Who was at that meeting?

A Again, Mr. Shippee, and I don't think there was anyone with Mr. Johnstone; possibly Mr. Waldby.

Q Where did the meeting take place?

A I think it was a breakfast meeting at the Waldorf.

Q Can you tell me the content of the discussion at that meeting?

A It was quite short and it was, I think it was stated by Mr. Waldby that Phillips would be very happy to work with Prudential or any company that could bring them a market for petrochemicals.

Q Mr. Young, have you confused that with a meeting in September?

A Possibly.

Q Do you remember a --

THE COURT: Anything is possible.

Q Do you remember a meeting in February 1966?

A Again I would have to look and see if I am refreshed. If you have any document that might refresh my recollection, it is a long time since 1966.

Q Let me try this:

I show you Plaintiff's Exhibit 107 and 109 and ask you if that refreshes your recollection with respect to a meeting with Mr. Johnstone on February 16, 1966? Do they refresh your recollection?

A Not very much I am sorry to say.

Q Do you remember there was a meeting with Mr. Johnstone on or about February 16, 1966?

A I recall I believe two meetings with Mr.

Johnstone.

Q This is the second meeting, is it not?

A I think so.

Q At the second meeting can you tell me what the discussion was?

A I am afraid my recoolection of this is not nearly as good as the documents as they are written here. My recollection is not good on this meeting at all.

Q In September of 1966 did you have a meeting with Mr. Waldby of Phillips?

A Yes. I think that is the one.

Q Is that the meeting you just described?

A Yes, the one I just described, you are right.

Q In which Mr. Waldby talked about markets?

A Yes, anyone who could bring a market would be fine.

MR. FARRELL: That is all I have, your Honor.

THE COURT: Any cross-examination?

MR. MacCRATE: Yes, your Honor.

CROSS EXAMINATION

BY MR. MacCRATE:

Q Mr. Young, returning to Plaintiff's Exhibit 213 which you identified as the brochure that was given to you in October of 1962 which had been previously assembled, I

ask you to examine this document and I will ask the reporter to assign it the next defendant's exhibit number.

(Defendant's Exhibit 336 was marked for identification.)

MR. FARRELL: Is this in the pretrial order? Do we have a copy of this?

MR. MacCRATE: Identical to what is in the pretrial order, simply another copy but is bound and more readily identifiable.

(Continued on next page.)

MR. FARRELL: Your Honor, before Mr. MacCrate questions about that document we received a pile about that high (indicating) of documents.

THE COURT: I will take that up with you in the absence of the jury, if it is essential.

MR. FARRELL: It is essential if he is going to use that.

THE COURT: I understood Mr. MacCrate to say that is just another copy of something which is listed in the pretrial order.

MR. FARRELL: It is not. It is a copy he now says he sent me Friday evening.

THE COURT: Is that so?

MR. MacCRATE: It is a copy, your Honor, the same as what we have had before.

THE COURT: Why don't you avoid controversy and use the one that is already marked, if that is the case.

What is the number of the exhibit that has already been marked?

How long will you be with this witness, Mr. MacCrate?

MR. MacCRATE: I have about one hour of interrogation.

THE COURT: Really?

MR. MacCRATE: Yes.

THE COURT: In that case, I might as well excuse the jury for the day.

10.30 tomorrow, members of the jury. And you can expect to break in the neighborhood of 2 o'clock.

You may now withdraw.

(Jury left the courtroom.)

THE COURT: Mr. Young, you will return at 10.30 tomorrow in this courtroom.

THE WITNESS: Yes. And my apologies, sir, for not being --

THE COURT: That's all right. Those things happen.

What is there about this exhibit which creates such a difficulty?

MR. FARRELL: Your Honor, we received, according to Mr. MacCrate, a copy of the one he is using, Friday night.

THE COURT: I didn't understand Mr. MacCrate to say that at all. I understood him to say that this document is listed in the pretrial order only it is a different copy of the same document.

Is that true?

MR. FARRELL: Your Honor, I haven't had a chance to see whether that is true or not.

THE COURT: Well, please give Mr. Farrell the number so that he and his associates can see if it is true.

MR. MacCRATE: Your Honor, in April of 1962 Mr. Coan obtained from UOP a report. We have had it heretofore, and it has been marked in all of its collected pages. We received this past Friday from one of our witnesses this volume that he had just found as he was preparing to come to New York to testify, and it brings those pages together and we have in one volume what appears to be the volume that Mr. Young would have worked with, with just the appearance that it would have had, and I was seeking to show this to the witness so that he could testify with respect to these materials that he says was handed in October of 1962.

MR. FARRELL: Well, your Honor, I think if that is the case we would be entitled to inquire of Mr. Young as to whether in fact this was what he received and whether it had all these pages and all these sections.

THE COURT: All right.

In view of the difficulty which the witness has had in answering questions and the delay in getting out his answers, I think it is reasonable to mark this paper

for identification and you may show it to him at the end of the day here and he can take time to look it over while the jury won't be sitting in the box.

Now, as far as these other matters are concerned, the Court has a copy of Mr. MacCrate's letter.

Now, where is that? And that involves papers which have been suddenly discovered by an officer or employee of the defendant, is that right?

MR. MacCRATE: Yes, your Honor. We do not propose at this time to use any of the other documents. This is the only document. I just brought it to Mr. Farrell's attention. I was as surprised and distressed as everyone else that after all of this I was still getting additional paper.

THE COURT: Well, if you don't plan to use any of them, they don't create any problem.

As far as this particular booket is concerned, I think it is reasonable to permit Mr. Farrell to look at it, discuss it with Mr. Young at his leisure, so that Mr. Young can take plenty of time to look at it, and then tomorrow it may well be that there will be no objection to your using it. If there is an objection, then I would have to hear counsel as to why you shouldn't be restricted to proceeding with the documents which were in the pretrial

order.

MR. FARRELL: Can I take this volume?

MR. MacCRATE: Yes.

MR. FARRELL: Thnk you, your Honor.

THE COURT: All right. Anything else?

MR. FARRELL: No, your Honor.

MR. MacCRATE: I believe that is all, your Honor.

THE COURT: Now, for any good it does you, gentlemen, in any discussions you are having, I recognie that I am not the trier of the fact except as to perhaps the equitabl claims here:

I would like to observe two you that I found on the issue of whether he disclosed his retainer with Phillips to Prudential, I found Mr. Anderson credible, and I can only conclude that they forgot it.

I don't think they had any motive for concealing it.

MR. FARRELL: Your Honor, his testimony today --

THE COURT: I thought he was telling us truthfully today that in his first discussions with them he told them he had a retainer with Phillips.

MR. FARRELL: Your Honor, that was not his testimony at his deposition. I think he misspoke today.

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I was surprised.

THE COURT: I was observing the man. I was watching his demeanor, listening to him very carefully. I could see how such a statement could be lost in the shuffle and be forgotten by all the participants. I don't see any motive for any of your clients to fabricate as to that matter.

MR. FARRELL: No.

THE COURT: But I thought he was telling me the truth. If he said differently on his deposition --

MR. FARRELL: That was the only point I wished to make. At his deposition --

MR. MARKS: He said he could not recall whether he had indicated this.

THE COURT: You had a chance to bring that out under the new rules. You can impeach his testimony.

MR. FARRELL: I had no particular need to do that.

THE COURT: I thought he was telling us the truth.

MR. FARRELL: I agree with you.

THE COURT: I think you should all be guided thereby for whatever importantance it has.

MR. FARRELL: Thank you, your Honor.

THE COURT: All right.

Off the record just for scheduling.

(Discussion off the record.)

(Adjourned to Tuesday, January 13, 1976, at 10.30 o'clock a.m.)

PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

New York, January 13, 1976;
10.30 o'clock a.m.

(Trial resumed.)

- -

(Jury present.)

T H O M A S R. Y O U N G , resumed.

MR. MacCRATE: May I approach the side bar?

(At the side bar.)

MR. MacCRATE: There is a pending matter, Exhibit 336 for identification. It is a composite of J-24 and J-25 brought together in one binder.

THE COURT: Is there anything in it which is not in those two exhibits?

MR. FARRELL: It shows on its face, it says:

"Tables and Section 3 and 6 missing, rest complete."

It shows it is not a complete document.

Also, inside it says, "Received February 1964 from Owen Martinez, PRIDCO."

I object vehemently to their use of the document.

THE COURT: I assume all your objections are vehement.

MR. FARRELL: Thank you, your Honor.

MR. MacCRATE: I'm not offering it for the notations upon it. I am offering it --

THE COURT: I fail to see the reason if the material is in evidence under another number you can't obviate any controversy by using what is already in the record.

MR. MacCRATE: Your Honor, the fact is that it is in pieces, it has to be united and then examined as a whole. It greatly complicates the matter because essentially what it comes down to is what portion of the study was used in 1962.

THE COURT: Does it make that much difference to either of you?

MR. FARRELL: Your Honor, it makes a difference --

THE COURT: We have to maintain the integrity of the pretrial preparation and the pretrial order. If there is some document you have that is solely for the purpose of impeachment or going to credibility, I can see holding that back. That was traditionally permitted.

There should be no excuse for a failure to produce this, as I understand it, in a case of this magni-

tude that has ragged on this many years.

It seems improper to permit more documents to come into the record with respect to which there is non-compliance with the pretrial proceedings.

MR. MacCRATE: It is a matter of discovery. We never located the document and it is something that I have always sought and when you try to piece together material from something as widespread as this, so many years after the events, it presents terribly serious problems.

THE COURT: These are intelligent businessmen are supposed to comply with their attorney's requests or directions and treat the litigation responsibility seriously and not come in at the last minute with something they have ransacked out of the attic.

Now, I am going to permit you to use any materials that you find which are directly and solely for the purpose of impeachment but, as to the rest of it, I think you ought to stick with those documents which you discovered and are listed in the pretrial order. The same ruling applies to plaintiff here.

I am not going to have plaintiff coming in with added starters or papers but solely for the purpose of impeachment you can use anything you found but for the purposes of going into the status of the brochure or what

it contained at any particular point in time, I am going to require you to continue with those papers which have been marked in the case already.

MR. MacCRATE: Exception, your Honor.

THE COURT: All right.

Is that in the record, that this was just not produced because of negligence?

MR. MacCRATE: I represent to the Court that it is something which was only located within the past week.

THE COURT: But there is no excuse for not having located it earlier.

MR. MacCRATE: I am not able to speak from any personal knowledge in that respect.

THE COURT: In the absence of a showing of a reasonable excuse for not having produced it earlier I will adhere to my ruling.

(In open court.)

CROSS EXAMINATION (Continued)

BY MR. MacCRATE:

Q Mr. Young, I sho w you Plaintiff's Exhibit 213 and direct your attention to the missing Appendix E .

I show you Exhibits J-24 and J-25 in this case and ask you if those two exhibits comprised a part or all of Appendix E?

A According to the table of contents it says, the title is the same. I cannot say definitely that it is exactly it at this stage of the game. I would have to go through a good deal of material but the title is identical as to Appendix E in the table of contents.

Q Last evening you reviewed pages such as these very closely, did you not?

A The document I had last evening was not the same as this. It has some of the same information in it but it also had -- I remember flow sheets that were fold-out flow sheets.

Q I call your attention to the flow sheet at the back of J-24 which here appears on two Xeroxed pages.

Is that not the flow sheet to which you just referred?

A This is one flow sheet. There was another flow -- if my memory is correct, it was 748 something.

Q I show you a flow sheet on the back of J-25 and ask you if that is the other flow sheet you had in mind?

A Yes, that is the one I have in mind. It is split up in a couple of pieces here, one upside down and one right side up.

These have the same title, is that right? Well, I can't answer at this stage that these are the

documents that were in there. They do seem similar and very likely are the same documents.

Q In 1962 did you not receive copies of J-24 and J-25?

A I'm sure I had copies of the UOP report, yes.

Q You went to work on J-24 and J-25, did you not?

A I worked on those. I am not sure they were original documents. The original document was in this form, not in the form of that UOP document which as a document itself as shown me last evening was a separate entity.

It was not a complete document as shown to us that I started off on.

Q The UOP study that you started off on was Appendix E to this volume that is now missing?

A The number -- the document I started on was essentially the same document.

THE COURT: As what number?

MR. MacCRATE: P-213.

THE COURT: The document you started on was the same as P-213, is that your testimony?

THE WITNESS: That is my testimony, yes.

Q Under Appendix E was the UOP study?

A I am sure there was a UOP data in that document,

yes. I think Appendix E was in the document when I worked on it.

Q J-24 and J-25 are portions of that UOP study?

A I certainly believe so.

Q When you turned to the technical side of developing a proposal you started with the UOP study, did you not?

A This was data already presented to us, yes.

Q You proceeded to go through and select certain portions of the UOP study, isn't that correct?

A As examples, yes.

Q You eliminated other portions of the UOP study?

A Yes.

(Continued on next page.)

Q Did you substitute anything for the eliminated pages of the UOP study?

A Yes.

Q Anything in a study of this character, or are you talking about generalized statements up in the front text?

A I'm talking about some information that I obtained from another engineering firm.

Q You're talking about the diagram of chemicals that you can derive from feedstocks, just flowing out like ever-multiplying fingers from the left hand side to the right hand side of the page.

A That's correct. They're sometimes called flow sheets.

Q And you obtained that from Parsons Engineering did you not?

A That's correct.

Q And you can find something comparable in just about any book on petrochemicals?

A I'm sure you can find similar documents. I think that these were from a substantial engineering firm and they gave us permission to use their particular documents.

Q And the document to which you refer showed

virtually every known chemical that could be derived from oil, over at the right hand side, did it not?

A Very likely. I hope so, because we were trying to show that this was what were the possibilities for this core refinery, ultimate possibilities, not that we were trying to do every one of them, but these would be the possibilities that this core plant could supply.

Q And so you were making a representation that from oil you can make these various chemicals?

A Yes.

Q Now, with respect to P-214, I ask you if you can identify that book for us as your workbook in 1962, '63?

A Yes, I can. I can see the words "Report in Brief," which is something that is not used by others as a summary, and I can -- yes, this is definitely mine. Here are the Parsons sheets I referred to. Yes.

Q Now you're pointing to the sheets that appear with the heading "Chart I, Major Petrochemical Intermediates"?

A And subsequent charts. I think there were about nine or ten of them if my memory is correct.

MR. MacCRATE: I ask that those pages that the witness has identified be assigned the next available letter in the 214 series. I believe it would be 214F.

THE COURT: Mark it.

(Plaintiff's Exhibit 214F was marked in evidence.)

Q Mr. Shippee has identified this volume without the handwriting and the insertions as a paper that had been compiled by the end of December 1962; does that accord with your recollection?

A Some of it was done that early, but it was revised a number of times, and which parts were in which revision, I don't know and I'm not sure whether this is the final -- with this date here it appears to me -- well, this is a January issue. Then it has a June date on top.

Q Well, the original typed text was dated January 1963, was it not?

A Yes.

Q And then there are handwritten notations on the first page at which you're looking, which is a cover sheet inside the notebook. And can you identify that handwriting?

A No, sir, I cannot.

Q On the contents appear Appendix A, B, C, in handwriting. Can you identify that handwriting?

No, I cannot.

Q Are you familiar with Mr. Shippee's handwriting?

A Yes. Not his printing. I don't think he prints very often. That is printing rather than handwriting.

Q Do you know who made that notation on there?

A I do not know who made that.

Q Now, on page 4 of the report in brief -- page 5 of the report in brief appears handwriting. Can you identify that handwriting?

A No, I cannot.

Q Are you familiar with the change that was made at that time?

A Yes.

Q Was that a suggestion of yours?

A Very likely. I see some erased handwriting which appears -- erasures here in pencil that appear to be my handwriting, very vaguely, under here, if you will notice.

Q Over along the left margin.

A Left, and apparently underneath here as well, going over here.

Q And does the pen and ink simply reflect --

A A re-wording of --

Q -- a re-wording of your statement?

A Very likely. Again, I can't be positive, because I can't read it, but it's been erased.

Q But you would have seen this at that time and

approved the language that appears there?

A I don't know of that. I don't know when this was put in there, but I probably would have, because I was working with this document practically continually for quite some time.

Q And if this period in the version that was sent to Mr. Chapman in late May of 1963, you would have approved it, would you not?

MR. FARRELL: Objection.

THE COURT: Well, it is argumentative. Reframe the question.

Q Mr. Young, I show you P-214, and ask you if that language is not incorporated at that point in the report in brief.

A It certainly is.

Q And having seen P-215, are you satisfied that is language that you approved?

A I'm sure I approved of that language. This--from what I can see of this, someone has taken this January document and brought it up to date by looking at this document, and this was, after this was originally presented, we revised -- I and Mr. Shippee revised it.

I don't know if anyone else was involved. I was primarily involved.

Q Now, when you say "this," what are you referring to that was revised?

A This first document that you just showed me which was a January document.

THE COURT: Just state the number of it for the record, please.

THE WITNESS: 214 -- or is it DEX? Which number do you mean?

Q D-214.

A 214. It is a document with an original date of January, 1963, and it has been edited in ink to be June 1963.

Q And these revisions were your responsibility, were they not?

A I made the revisions, yes; between this document in its original form and this document.

Q And the change to which I have just called your attention under report in brief is a change that was incorporated in the final version, D-215?

A Yes.

Q Now, I show you P-214A and ask you if you can identify the handwriting.

A That is mine. Some of it. Insert A -- it is mostly mine. And there are a couple of sentences and a

couple of words -- the first sentence and part of the beginning of the second sentence are someone else's writing.

Q Are you referring to the ink as distinguished from the pencil; yours is the pencil and someone else's is the ink?

A There is no ink here as I can see. This is a different -- it is a darker pencil is what I think you're calling ink.

Q Mr. Shippee testified that there were pencil and ink on that page, and he identified the ink as his handwriting. Would that accord with your reading of it?

A He's writing more carefully than usual if that is his handwriting, that is my recollection. It could very well have been his thought.

In other words, I had written an Insert A, and in my writing, fairly light, it goes all the way down here, and it was added, "New opportunities are constantly arising, as for example" -- and then it went on.

Q Now, would you look at P-215 and tell me if that insert is incorporated into the text?

A Yes.

Q And I turn the page, Mr. Young, and call your attention to the references to Natural Resources of Puerto

Rico. Does that revised reference page also appear in P-215?

A Yes.

Q Did you participate in the compilation of the revised reference page also appear in P-215?

A Yes.

Q Did you participate in the compilation of the revised references?

A They were taken from a Puerto Rican document, as I recall. It says "For a report in full see Appendix A."

Q Now, referring to P-214D, headed "Core Plant," there have been certain penciled corrections in the last paragraph. Do they appear in P-215?

A Yes.

Q Under Chapter III, "Support of the Commonwealth," the last two lines have been deleted. "A summary of this position and of the support of the Commonwealth Governemnt is contained in their recent letter to the sponsoring group."

Did you delete that from that page?

A Yes, I think so, because it was -- I have a little pencil notation on the side there.

Q And your penciled notation reads, what?

A Check versus less of August 1961.

Q And what was the purpose of that notation that you placed in the lower right hand corner of the page?

A I'm sure it was for the accuracy of the document.

Q Well, did Prudential or the Shippee group or PROPCO receive a recent letter of support from the Commonwealth Government as of January, 1963?

A I think it was my impression that that letter had been received and I later found that it had not been received, is what I think happened. Again, that would certainly explain that action.

Q And the deletion has been made in P-215, has it not, in accordance with the notation on 213 or 214?

A Yes.

Q Now, turning to D-214E, I call your attention to the notations on the second page, the yellow sheet attached to the third page, and the changes noted there in pencil, and ask you if that is your handwriting which appears on those pages.

A Yes, it is.

Q And those are changes made by you, are they?

A Yes, they are.

Q And are they incorporated in P-215?

A Yes.

Q And are the changes that appear under officers and directors, Puerto Rico Oil and Petrochemical Company, on the first and on the second page, incorporated similarly into P-215?

A Yes.

Q Now, following after that, as you turn through 215, do you find a report entitled "National Petroleum Refiners Association Fall Meeting"?

A Yes.

Q And is the same report in 214 as in 215?

A Yes.

Q A grammatical change in Chapter V, under "Engineering Planning," is that a change which you made to insert the preposition "to"?

A It is my writing.

Q And is that incorporated into P-215?

A Yes.

Q And there follows a map of Puerto Rico, and on the page following the map there is a change indicated as to the arrangement of the type on the page. Was that effected from 214 to 215?

A Yes.

Q If you will just turn with me through the next pages and we will come to Appendix A.

Do you recall what was the document under Appendix A, if any?

A I don't recall but I assume that it is the same as in here or at least -- is there a reference to it?

Q Is not the paper to which you are pointing in 215, isn't that Appendix A?

A It certainaly appears to be. At least on the covering page that is.

Q Is there Appendix A in that volume, 215?

A It says Appendix A, B, C.

Q Do you recall what Appendix A was?

A Not at this time.

Q But Appendix A is absent both from 214 and P-215, is it not?

A If this appendix in here is the same as B, I assume you have studied it and know that iit is.

Q I would ask you now to look at Appendix B in P-214 and ask if you can identify what that is?

A This is 214?

Q 214 is the blue covered notebook.

A This is the reproduction of the report made by UOP of part of that report that refers to using a typical

Venezuelan crude to produce the maximum feasible quantity of petrochemical raw materials and intermediates.

They made other studies at the same time in their report but we were only interested in this particular part as a typical Venezuelan crude, not necessarily the one that would be used.

Q And the portion of the UOP report that appears in 214 is the same portion of the UOP report as appears in 215?

A I certainly believe so. I would have to go through the details. I would certainly expect it to be and to be certain I would have to go through word by word but I am quite sure it is.

Q Turning now to J-24 and J-25 which you have identified as being the April 19 62 report of UOP of materials which were furnished to You in the fall of 1962, I would ask you to leaf through with me, starting with the first page of your Appendix B in 214.

You have taken have you not the first paragraph, the third paragraph and the fifth paragraph onthat page?

A Yes.

Q And youhave deleted the other portions on the page?

A Yes, they were not relevant to the maximum

petrochemical feedstocks.

Q That is from the introduction?

A Yes.

Q And then you have discarded the page headed "Section 2, Basic Considerations"?

MR. FARRELL: I object to this going on any longer. All these cocuments are in evidence and Mr. MacCrate can compare them to the jury. I think to use the witness' time --

THE COURT: I think it ought to be brought to a close reasonably soon. I think it is proper to ask the witness generally what he did with respect to these different documents but we don't have to go line by line.

Q You discarded the next page headed "Section 2, Basic Considerations," did you not?

A If it isn't in here I obviously discarded it, yes, sir.

Q But then you took the very next page which was the second page of that section and just duplicated it and incorporated it in verbatim?

A Yes. I also said that we used that or I used that because it was an example of the maximum utilization of Venezuelan crude for petrochemical feedstocks.

That was what it purported to be and what it

was and that is what I think all the rest of it refers to.

Q Then you took the following eight pages numbered 2 through 9 and incorporated each one of those into your booklet, did you not?

A Right.

MR. FARRELL: Objection, your Honor, to continuing this line.

THE COURT: Well, I think we ought to come to the end.

Is it understood that he took substantial amounts of the prior report and incorporated it verbatim into this report?

MR. MacCRATE: He excluded, your Honora, a very important part. Just -- I don't want to indulge in argument --

THE COURT: That can be shown to the jury based on the record that is here, isn't that so? These two documents can be seen by the jury and can be shown during summations as to which part he took in and which part he left out and what parts he put in that are new.

MR. MacCRATE: If J-24 and J-25 were combined, your Honor, I would have no further difficulty. What I would like to do is make the linkage which I can do very promptly.

THE COUFT: Ask him very briefly, if you will.

Q After page 9 in J-24 there is a Section 3 headed "Summary." Did you elimi.. e that?

A I think maybe you better tell me because I am not as thoroughly familiar with these documents as you are, sir.

Q Well --

THE COURT: Well, one thing we don't want is to have lawyers testifying. Let's go on to something else.

Q You eliminated the ensuing Tables 2 through 10, did you not that followed prior to Section 5?

A I believe so because they did not relate to the maximum use of the petrochemical feedstocks.

MR. FARRELL: Is the record clear that is J-25? I don't think it is.

MR. MacCRATE: Thank you, J-24. I misspoke. We have the two here.

Q Then in J-24 there was a Section entitled "Possible Petrochemical Complex." You eliminated all of that, didn't you?

A Again, if it is not in here it was eliminated, I assume. For me to remember in detail --

Q You had nothing in here from the UOP study in

your version, P-214 for a petrochemical complex, did you?

MR. FARRELL: I object to that, your Honor. Don't answer that, Mr. Young. I object to that. It misstates the exhibit.

Q If the exhibits show on their face then the question doesn't need to be asked, does it? Without examining these exhibits I can't rule on the objection.

Can't you reframe the question?

Q You eliminated Section 6, did you not, from what you incorporated into your booklet?

A If it is not in this book it is eliminated.

THE COURT: Didn't that require a decision on your part what you would put in the booklet?

THE WITNESS: Certainly.

THE COURT: You had to make a decision to eliminate?

THE WITNESS: More a selection as to what would be a good example of a petrochemical feedstock plant is what it amounted to.

Q Referring to J-25, the materials appearing in your booklet, P-214 addendum Isomex case, are they incorporated from J-25?

A Yes, that is Isomex, this is the UOP case that they had put in and I had in here. A slight modification

as to what was already in their Isomex case, I believe in earlier documents.

Q You made no change however in the UOP Isomex case as it came to you in October of 1962, did you?

A I think it was later than October 1962 but maybe it was part of that. I think you are right, I think it was in the original. Incorporated in the original document, I believe.

I certainly would not make a change in the Isomex because that is a UOP proprietary process and most of the UOP document and I reproduced it in their words because it was their document.

Q But you did eliminate from their document and from their document and from their report various paragraphs and tables to which we have already referred, that you incorporated?

A That is correct.

Q You testified, Mr. Young, that you wanted to provide flexibility and you had put together a proposal that had the flexibility to produce a wide variety of chemicals? That was your testimony yesterday, was it not?

A That is correct.

Q You referred to a flow sheet as being an example

of that flexibility, did you not?

A The flow sheet is not an example. A flow sheet shows the flexibility, yes.

Q Is not the flow sheet, the one flow sheet that you took out of the UOP report the only flow sheet that appears in that booklet other than the Parsons listing of all the chemicals that can be made from oil?

A The Parsons listing of all the chemicals that can come from oil are flow sheets and they show in the same way what products can be produced as the other flow sheets.

The other flow sheets show somewhat more details of how they are produced but the Parsons, what you call the listing of chemicals, are not a listing of chemicals. They have a diagram showing what relates to what and what chemicals go together to produce the petro-chemicals.

Q It is your testimony that there is no difference between the Parsons listing of the derivation and chemicals and the UOP flow sheet, the last sheet in your booklet 214?

A No, I did not say that at all.

Q What is the difference between the two?

A If there is the one UOP flow sheet, there are also 10 Parsons flow sheets. There are 11 flow sheets

altogether in the document.

Q Is there any reference in the Parsons flow sheets to how you would go about going from one source of petrochemical to a variety of chemicals?

A It shows what chemicals go to gether to reach additional chemicals and what petrochemical feedstocks are derived from what, from other petroleum stocks.

Q There is no reference to the processing at all, is there?

A The details of processing are not there.

Q You made no attempt to determine the economics of any of these various alternative processes, did you?

A Of those I think not. They were not in the document. I did make an attempt but they were not in the document.

Q As far as what You were presenting as to a typical refining process, there was not anything that was added from what UOP had provided in april 1962, was there?

A Would you say that again, please?

THE COURT: Read the question.

(Question read.)

A That is correct, a typical process.

Q You referred yesterday to your proposal for a tetraethyl lead plant. Are you familiar with the core

of Phillips in Puerto Rico?

A No, I have never been invited to see it.

Q Do you know what facilities it includes?

A No, sir.

Q Mr. Young, we have leafed through together P-214 in the blue book and you have examined with me various handwritten notations and inserts.

Mr. Shippee has indicated that those are the changes that occurred between January of 1963 and May of May of 1963.

MR. FARRELL: Have you completed your question?

Q Does that accord with your recollection?

MR. FARRELL: I object to the summarization of Mr. Shippee's testimony.

THE COURT: Yes, ordinarily a person should not be cross-e ied as to somebody else's testimony but he may be asked the underlying issue, whether it is so or not so.

Reframe the question, please.

Q Mr. Young, is it the fact that the changes that appear on P-214 in handwriting, interlineations, are the only changes that were made in the brochure between January and May of 1963?

A I would have to examine it to find out. From

a quick casual look here it appears so.

Q You referred to three meetings that you had with Mr. Fischbeck and you identified them as being on February 20, March 8 and March 27.

Can you recall any other meetings that you had with Mr. Fischbeck?

A I believe I had meetings with Mr. Fischbeck prior to those meetings. I cannot give the dates.

Q Can you identify them for us in any way?

A It is difficult for me to differentiate between meetings and telephone calls. I would talk to Dale on the phone quite -- Mr. Fischbeck on the phone quite frequently. I did have difficulty getting him quite often. He was traveling a good deal.

But there were several discussions and how many were in his office and how many were in other offices, without definite reminders or minutes of the meetings, it would be very difficult to remember which took place where.

Q In addition to the three discussions that you testified about on direct examination, can you identify any other specific conversation that you had with Mr. Fischbeck prior to April 1 of 1963?

A April 1? There have been a good many prior

to April 1 but I cannot identify them at this stage of the game as to when they occurred and where they were.

I do recall -- I don't know if I mentioned this yesterday -- I do recall one where -- I think I mentioned this yesterday. After Mr. Chapman had asked to reduce the quantity of non-petrochemical products, and I don't remember the exact date. I think it was in the documents, in the diary notes yesterday. I think that took place in Mr. Coan's office after we had an earlier meeting in the same office with Mr. Lewis of Monsanto.

At that time we had a further discussio with Mr. Fischbeck, we being Mr. Shippee and I had a further discussion with Mr. Fischbeck after Mr. Lewis left, at which point we discussed the problem of reducing the petrochemical by-products and Mr. Shippee asked if there was some other partially refined fuel that could be used.

I think Mr. Fischbeck thought was a good possibility and we discussed a little bit about the use of naphtha or some grade of naphtha.

Q You are referring to a conversation about which you testified yesterday, are you not?

A Yes, I couldn't remember whether I mentioned that yesterday or not.

Q Mr. Young, you also testified that you had selected in November, 1962 site for a plant?

A Yes.

Q In the Mayaguez area. Now, upon what did you base that selection?

A That selection was based on several sites that were suggested to us as possibilities by Mr. Van Hyning of the EDA.

Q You had a UOP site study, did you not, in the material that had been provided to you?

A There had been a UOP site study. The only problem was I hadn't really paid much attention to it up to that time. That study, and later there was the detailed report that had been made for Puerto Rico by some Chinese --

Q Ti Liang?

A That sounds right, yes, was made available either later or I was made aware of it at a later date.

Now, it may have been in some of the documents that were handed to me that I didn't get to look at.

Q Did you have the Ti Liang study when you made this choice?

A No, sir.

Q Well, you did not base your choice, then, on the Ti Liang study?

A I did not.

Q And what you had before you at that time was the UOP site study and a conversation with Mr. Van Hyning over these areas?

A The UOP study on site selection was, again, something that I had not looked at prior to my trip to Puerto Rico. I believe it was included in the original information that I had, but I had not gone into that particular part of it.

Q On your return to Puerto Rico in December of 1962, were you asked by the Puerto Rican authorities to review the feasibility with Chemical Projects Associates?

A Yes.

Q And do you recall making a visit to Chemical Projects Associates?

A I recall talking to them on the phone, and I think I invited the Chemical Projects people to lunch with me and Mr. Irrizarry of EDA too, or was it, it might have been Mr. Blinken of Warburg.

Q Mr. Blinken of Warburg. And do you remember a comment in the course of that luncheon at the Chemical Club made by the Chemical Projects Associates people with respect to Mr. Learned's letter?

MR. FARRELL: I object to that, your Honor.

That has nothing to do -- what one person thought of Mr. Learned's letter, who is not even a party or a witness or anything to this case, I think is totally irrelevant

THE COURT: Will counsel approach the side bar, please?

(At the side bar.)

THE COURT: What are you offering to show?

MR. MacCRATE: I am offering to show, your Honor, that Mr. Young was told at that luncheon that "any oil company would give you that kind of letter in two minutes," and that this was a part of his understanding in the circumstances and I feel that it goes to the very heart of their good faith position.

THE COURT: I decline to take it on cross examination of this witness. I will sustain the objection.

MR. MacCRATE: You understand, your Honor, that this was a statement made to this witness?

THE COURT: I understand that, but it was giving the impression or the opinion of the person making the statement. It was the person making the statement giving his impression or opinion, not binding on Prudential.

MR. MacCRATE: This man remained silent, your Honor. I'm entitled to ask what he said in reply.

THE COURT: If he said anything to the other

gentlemen, you may ask what he said to the other gentlemen. What are you offering to show by the reply? Did he say anything? Was he silent?

MR. MacCRATE: I think I am entitled to have it in this record what his response was.

THE COURT: I want to say to you in spite of the time taken on your cross examination of this fellow, it is still not clear to me what his status in the matter is. Is he an employee of Prudential Oil Corporation? What is he? He's not an agent to admit by silence, as far as I see. I decline to take it. I will sustain the objection.

(In open court.)

Q Mr. Young, do you have a financial interest in the outcome of this action?

A Not directly. Indirectly, through Prudential.

Q And what is the nature of your financial interest?

A That has not been exactly determined.

Q By whom is it to be determined?

A It will be determined by negotiations between me and Prudential.

Q When you refer to negotiations between you and Prudential, is there anything in writing that confirms that there will be such a negotiation?

A I think there have been a couple of letters of general thoughts along those lines, but nothing final as far as definite agreement.

Q And between whom were the letters exchanged?

A One letter was written by Mr. Shippee to -- I guess both letters were written by Mr. Shippee to Mr. Willey, and a copy to -- and one was written to Mr. Willey only, and the other was written with a copy to me.

Q One with a copy to you?

A Yes.

Q Would you identify for us by content, the letter of which you received a copy?

MR. FARRELL: Your Honor, I object to that.

THE COURT: As to the form of the question?

MR. FARRELL: Yes.

THE COURT: Well, I will sustain it as to form. But the nature and extent of this witness' interest in the outcome of this lawsuit may be brought out.

Who in behalf of Prudential is going to make this final determination?

THE WTINESS: That is up to Prudential, I would say.

Q Has Mr. Shippee given you any oral assurances of what he would do?

A We have had discussions.

Q When did you last discuss it with Mr. Shippee?

A Oh, about the time that depositions were being taken, which must have been, what, five years ago?

Q The time when you gave testimony in this action?

A Are depositions testimony? Yes, if that's what they are.

Q I note here, Mr. Young, that your testimony was taken on May 27, 1970. Does that accord with your recollection of the conversation with Mr. Shippee?

A It seems to me there were several depositions taken, some in the spring and some in the fall. I think there were some taken also later in the year. ABout 1970. I would have said '69, '70, that period , yes, five years ago.

Q Where did you have the conversation with Mr. Shippee?

A They were in some lawyer's office downtown.

Q Who was present?

A Two separate lawyer's offices, I think. Prudential lawyers and the other law firm. It's probably your law firm. It was the Phillips law firm. If you're still the same.

Q You're talking about the deposition, where the deposition was taken, are you not?

A Yes.

Q I'm asking you about your conversation with Mr. Shippee; where did that take place?

A I think it took place at lunch, after the depositions, or in that same general period of time.

Q And who was present at the time of that discussion with Mr. Shippee?

A It was probably Palmer, Searles, I think was the name of the firm, Palmer, Searles, lawyer. I don't remember his name.

Q You and Mr. Shippee and the Palmer, Searles lawyer were present, is that your best recollection?

A Yes, that is my best recollection.

Q What did Mr. Shippee say and what did you say?

A He sayd, "I'll have to send you a letter and see," and that's when he wrote the next letter, or it was some time later that he wrote the next letter, but he did write another letter.

Q And what did Mr. Shippee state in that letter to you?

A In that last letter he stated that, as a general thought, he thought that of the net interest, after

all lawyers' fees and expenses and everything else, that Prudential would receive 50 percent, and that Mr. Willey and I would receive ten percent, and I think Mr. Shippee was also to receive 10 percent, and in one of the letters, whether it was that letter or the other letter or both, he said that his 10 percent would go back to Prudential, and there was, I think there was also a percentage in there for Mr. Anderson or others, I've forgotten just what the situation was there.

Q You have identified that you had an interest, Mr. Willey had an interest, and Mr. Wright had an interest.

A I did not identify Mr. Wright.

Q Not Mr. Wright?

A I didn't identify the others because I don't remember. But the other names, I think -- I don't think there were other names.

Q But he indicated that there might be others?

A He indicated that there were others involved, yes.

Q But he didn't disclose to you who they were?

A I don't believe so.

Q Did he refer to --

A I think in an earlier letter that Mr. Wright was referred to, but you asked me about the last letter, and--

Q And the people referred to in that last letter were you, Mr. Willey and Mr. Shippee?

A And Prudential and others, yes -- others, the word, the name "others," spelled o-t-h-e-r-s, yes.

Q Have you ever asked Mr. Shippee who those others are?

A No.

Q Was there any statement in that letter as to how this determination would be made?

A The letter was about yea long (indicating).

THE COURT: Indicating about two inches with his fingers.

Q Did you write an acknowledgement to the letter?

A No, sir.

Q Have you had any correspondence with Mr. Shippee on this subject, you, yourself, in letters that you have written to him?

A I think I may have written him a letter asking that he spell out what the division would be, but I am not positive. I think I wrote him a letter.

Q When did you write Mr. Shippee that letter?

A That would be several years ago, but I don't know just when.

Q Before or after receiving the letter about

which you have just testified?

A If I ever wrote it, it was before I received that letter.

Q Mr. Young, where today is the letter that you received from Mr. Shippee in or about 1970?

A In my desk at home.

MR. MacCRATE: I propose to request the production of that letter.

Q In December of 1962, what was your position in relation to Prudential; were you an employee; were you a hired consultant; what was your relationship?

A I was a consultant.

Q Had you signed any agreement reflecting that relationship?

A No.

Q This was simply by word of mouth?

A Yes.

Q With whom did you exchange words on it?

A Mr. Shippee and Mr. Willey.

Q And what did they say to you about your retention?

A I don't recall exactly. It was more a question as to whether this was -- when we first talked about it whether this was a viable project, and if it was a viable

project, would I be willing to work with them on a joint venture basis to carry it on through, but it was an "if" and "when" situation.

Q Did you accept that offer from them?

A The answer is obvious. Yes.

THE COURT: During the time that you were working in connection with that, did you have any other employment?

THE WITNESS: Yes, I did.

THE COURT: What were you doing?

THE WITNESS: I was vice president of Houston Chemical Company.

MR. MacCRATE: Your Honor, based on the witness' testimony, I would ask to approach the side bar.

THE COURT: Perhaps we can excuse the jurors and have a recess at this time.

Members of the jury, you may go to the jury room, please.

(Jury left the courtroom.)

(At the side bar.)

MR. MacCRATE: The witness has identified himself as a joint venturer, I would submit, with Mr. Shippee, and that in that role I should be entitled to interrogate him as to things that are said to him while he

is acting in furtherance of that venture, and in that connection I would propose to interrogate him with respect to D-337 for identification.

THE COURT: Exactly who are Chemical Associates?

MR. FARRELL: They have no official relationship with this project.

MR. MacCRATE: An independent consulting firm, your Honor, that EDA suggested.

MR. FARRELL: EDA rejected them, as a matter of fact.

MR. MacCRATE: Well, the subsequent history is that in lieu of Chemical Projects Associates, there were conversations with A. D. Little.

MR. FARRELL: The subsequent history is that they rejected them.

THE COURT: One at a time. That goes to the merits.

You see, I think this has very slight weight, but I think under these circumstances, it may be admissible.

MR. FARRELL: Your Honor, there's been no showing that the person who said this had any expertise except in this memorandum. If Mr. MacCrate wanted to call an expert to say "any chemical company or any oil company

would give you that letter," he could do it.

THE COURT: It isn't that. It is the question whether this witness was told that and was silent. I think it is entitled to such slight weight I don't know why we prolong the agony with this witness.

MR. FARRELL: I think it is prejudicial if it is entitled to that slight weight.

THE COURT: Not necessarily.

MR. FARRELL: In the end, it will be argued -- this will be all blown up about how this great big expert said this letter wasn't worth a darn, and Mr. Young didn't say anything. The jury is going to be impressed with the fact that some unknown faceless person, who is described as an expert, said that. That's what is going to happen in the summation and I think that is prejudicial, especially since he could call him if he wanted to.

THE COURT: With a proper foundation, I will permit it, but it must appear that he went there in furtherance of this joint venture, and the purpose for going there, and who the fellow was who told it to him and what if anything he said, and stop right there.

All right.

(Recess.)

Q Mr. Young, do you recall at your deposition on May 27, 1970 the following questions and answers appearing at pages 12 and 13 of the transcript:

"Q Do you have a lawyer in this action?

"A I personally do not have a lawyer although I am represented. All the Prudential interests are being represented by Palmer & Serles.

"Q Then I understand you have retained no lawyer of your own in connection with this action?

"A That is correct.

"Q Then Mr. O'Neill and Mr. Foxley are not appearing today as your counsel, is that correct?"

There is a statement by Mr. O'Neill:

"MR. O'NEILL: Mr. Young's statement was that Prudential has retained the firm" --

MR. FARRELL: I object to this.

THE COURT: I will permit it solely as bearing on credibility. I don't even have a copy of that. You read from papers that I don't have copies of. Apparently the original is not docketed and I don't have any copy.

However, I think it is permissible.

Go ahead, Mr. MacCrate. Let us speed the trial along.

Q "MR. O'NEILL: Mr. Young's statement was that Prudential has retained the firm of Palmer & Serles of whom Mr. O'Neill is a partner and Mr. Foxley is an associate to represent the interest of Prudential.

"Mr. Young has testified that the action is being brought on behalf of Prudential and those who have a financial interest in the recery.

"Q Then I take it Mr. O'Neill's appearance today is on behalf of Prudential Oil Corporation and not on your behalf, Mr. Young, is that correct?

"A From what Mr. O'Neill said just now I would assume that he appears on behalf of both because I am an interested party in this action."

Mr. Young, returning to the luncheon at the Chemical Club in December of 1962, can you identify who was there on behalf of Chemical Project Associates?

A I don't recall the names. I think there were two men from Chemical Projects -- was that the name?

Q Chemical Projects Associates.

A Chemical Projects Associates. I don't recall their names.

Q Does the name Nieuwenhuis refresh your recollection?

A That sounds -- there was another name that was a shorter name.

Q Mr. Arkin?

A Yes, Mr. Arkin.

Q What was the purpose of this meeting?

A I think they were a firm that we had asked to talk to much as we talked to Arthur D. Little, to make a report for the EDA.

THE COURT: Who asked You to talk to them?

THE WITNESS: I am very vague on this, your Honor, but I think it was the EDA asked us to talk to them.

Q Can you recall a statement during that luncheon by Mr. Nieuwenhuis or Mr. Arkin relating to Mr. Learned's letter of November 13, 1962?

A No, sir.

Q I show you Defendant's Exhibit 337 for identification and invite your attention to the last paragraph of the first page.

I ask you does that not refresh your recollection?

A I don't recall that statement but I certainly don't deny that it was made. I do remember that the CPA people were very negative in almost whatever was said. They were very derogatory of the whole thing.

That was the general impression I have. I really can't give you anything more from my own personal memory. I can read this and think well, this is probably what happened and I am sure it is properly reported.

I don't know who wrote it -- DMB, that would probably be Blinken of Warburg, is that correct? Was he there?

Q Does that accurately record what was said at that meeting?

MR. FARRELL: Objection, your Honor.

A I can only presume so.

THE COURT: I will permit him to answer.

Don't presume, give us your best recollection. That is what a witness can testify to.

A Let me read the whole thing.

THE COURT: Didn't you read it during the recess?

THE WITNESS: No, I didn't read it during the recess.

THE COURT: All right, go ahead and read it.

(Pause.)

A It is about half report of the meeting and about half conclusions from it.

Q As far as the portion that reports upon the

discussion at the meeting, is that a fair summary of that discussion?

A I think so.

Q With respect to Mr. Learned's letter, was the statement made that any oil company would give you that kind of letter in two minutes?

A I don't recall his saying that but that memo certainly says that he said it.

Q Do you recall any response on your part to any comment that was made about what Phillips had done with respect to this project?

MR. FARRELL: I object, your Honor. He said he didn't recall the statement.

THE COURT: I will overrule the objection and after he answers I will give a limiting instruction.

A The whole tenor of the CPA approach was so negative that my recollection is that I gave essentially no responses at all. They seemed pretty much off base in my opinion. That is all I can say.

THE COURT: Members of the jury, the statements said to have been made to the witness by Mr. Nieuwenhuis or Mr. Arkin is not received of evidence of the truth thereof but merely evidence of the fact that it was -- whether it was or was not said, at this point it is not

clear whether it was said or not since this witness says he doesn't recall. But it is not received as evidence of the truth thereof.

MR. MacCRATE: May I approach the side bar, your Honor?

(At the side bar.)

MR. MacCRATE: We propose to serve Mr. Young with a subpoena to produce the papers that he identified that he has with respect to his interest in the proceedings.

THE COURT: My understanding is that the full letter to which reference was made calls for 15 per cent interest rather than 10 per cent interest.

MR. MacCRATE: This is very -- it is four years later.

THE COURT: I think it should be produced and a copy can come from Prudential, that o ught to be satisfactory to you.

MR. MacCRATE: I would like to have what Mr. Young has on this, your Honor.

THE COURT: He said it is out in Houston?

MR. MacCRATE: No, his home is in Greenwich.

MR. FARRELL: His home has been closed and the pipes drained.

THE COURT: I don't care about that. He can

go up and open the door or in the alternative you can get a carbon copy of the Prudential files and that should be satisfactory.

MR. MacCRATE: I don't know what else is in this file. I am requesting those documents he has.

THE COURT: Has he been fully deposed?

MR. MacCRATE: Your Honor, there was obstruction to this whole line based on attorney-client.

THE COURT: How could that be if this man had a financial interest in the outcome. That should be the entire cross-examination, Mr. MacCrate. All the rest of this cross-examination pales into insignificance if the fellow is an interested witness. To the extent that he remembers anything, his testimony may be affected by his interest and that is the end of it.

I will direct the letter setting forth the 10 per cent be produced. If he has to go to Greenwich he may. If he doesn't want to go to Greenwich he can get it out of the files of Prudential Oil Corporation which I assume has retained copies of it or Mr. Shippee.

If you want me to make a direction in the absence of the jury to this man personally I will do so.

On the other papers, in the absence of a showing of precisely what other papers there are, at this

late stage in the litigation I am not going to have any file search. If there are precise papers which exist which are relevant and necessary I will direct those to come in also.

You might show me in this deposition where a request was made or where else they were made, if made by interrotatory or otherwise.

Do you want me to excuse the jury and make a direction to him?

Do you have any redirect examination?

MR. FARRELL: I have no further questions.

THE COURT: Why don't you have that and then I will direct him about the letter.

(In open court.)

THE COURT: Is cross-examination conluded?

MR. MacCRATE: It is completed.

THE COURT: Any redirect examination?

MR. FARRELL: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Young, did Chemical Project Associates have anything further to do with the project after that meeting that Mr. MacCrate referred to?

A No, sir.

Q I show you a page that Mr. MacCrate asked you about. This page is in Exhibit 214 and it is headed "Chapter 3 - Support of the Commonwealth."

You recall that Mr. MacCrate asked you if you crossed out the last two lines on this page?

A Yes.

Q In the margin there is some handwriting. Will you read that handwriting?

A "Check verus letter of August 16."

Q I show you Plaintiff's Exhibit 31 for identification and ask you if that is the letter referred to?

A I believe so.

MR. FARRELL: I offer this letter.

THE COURT: Is it offered with the pencil indications on it?

MR. FARRELL: Yes, your Honor.

VOIR DIRE EXAMINATION

BY MR. MacCRATE:

Q Mr. Young, under the date there is a notation. Is that your handwriting?

A Yes, it is.

Q What does it say?

A "January 4, 1963 ADL" which is A. D. Little -- "Jim Jensen and Si Norton."

Q On the left-hand side there are notations. Are they also in your handwriting?

A Yes.

Q What does the first -- I guess that is sufficiently legible, your Honor. I won't inquire.

MR. MacCRATE: I have no objection.

THE COURT: All right.

Exhibit 31 is received in evidence.

(Plaintiff's Exhibit 31 for identification was received in evidence.)

MR. FARRELL: That is all I have of this witness.

THE COURT: All right, anything else for this witness, Mr. MacCrate?

MR. MacCRATE: No, your Honor.

THE COURT: At this time I will ask the witness to remain and excuse the jurors to the jury room very briefly while I take up a procedural matter. We will have about a five-minute recess.

(Jury left the courtroom.)

THE COURT: At this time, Mr. Young, I am going to direct you to produce the letter to which you had reference in your testimony today, which letter in substance apparently states that you have a 10 per cent interest in

the proceeds of the outcome of this litigation by the plaintiff here.

Now, I wonder if we can't get some agreement, some copy from the hands of Prudential if it has one which could be used instead? I discussed that briefly with the attorneys. I understand the original is in your home.

THE WITNESS: I'm not sure whether mine is an original or a copy.

THE COURT: The one you testified about.

THE WITNESS: The one I testified I believe is in my home and I think that it is either on my desk or in a drawer in my desk.

THE COURT: Can you bring it in tomorrow morning?

THE WITNESS: No, sir.

THE COURT: What time can you bring it?

THE WITNESS: I have to fly to St. Thomas --

THE COURT: I don't care about that.

THE WITNESS: I have to fly to St. Thomas, the key to the house is in St. Thomas unless I break a window and I guess I could have that repaired but --

THE COURT: You mean to say that you would spend airline fare to fly to St. Thomas to get a key in prefer-

ence to hiring a locksmith to open a lock or break a small window?

THE WITNESS: That is why I said there was another approach.

THE COURT: How much does it cost to go to St. Thomas, $3 or $400?

THE WITNESS: No, I am on my back there anyway. I'm quite sure we can get one from the Phillips' files which would certainly be more logical -- not Phillips, I mean Prudential.

THE COURT: I will tell you in the absence of getting a satisfactory copy from Prudential I am going to direct that you obtain it. If you want to go the round-about way of flying to the Virgin Islands and back to get it that seems ridiculous.

THE WITNESS: I do too. I agree.

THE COURT: But there is no other access to the house? What would you do if a pipe broke or the heating system failed?

THE WITNESS: I wouldn't be there, sir.

THE COURT: Doesn't anyone have charge of the house?

THE WITNESS: No one in charge of the house there.

THE COURT: Is this a private detached house in Greenwich?

THE WITNESS: That is right.

THE COURT: And nobody can get in your house for an emergency?

THE WITNESS: No, unless they break in. I have the key.

THE COURT: Engineers I guess are different.

Anyway, the letter will be produced or get a stipulation in lieu of it or an authorized authenticated copy.

THE WITNESS: I am quite sure Prudential will have a copy.

MR. FARRELL: We will undertake to produce a copy.

THE COURT: You should know that this afternoon, Mr. Farrell, and I make a direction to this witness if he fails to produce it I am going to strike out his testimony and tell the jury why. So if he has a 10 per cent interest in this case and he has a letter or he can make sure that a carbon copy is obtained or he is going to go up and open his home in some fashion. I certainly hope you aren't apprehended by the Greenwich police.

THE WITNESS: The only time the house was

entered is when I told them I wasn't going to be there.

THE COURT: By 10.15 tomorrow morning this paper is to be resolved satisfactorily.

MR. FARRELL: Yes, your Honor.

THE COURT: I think you will find it cheaper to hire a locksmith than break a window. That is a matter for your decision.

THE WITNESS: That is not the problem, the only problem might be finding it. My filing system isn't all that good but I'm sure Prudential will have it.

THE COURT: You testified it is there and I expect this to be there.

This witness is excused subject to the Court's direction and if it is not resolved he is to return tomorrow morning at 10.15.

Do you understand that you personally unless you have the letter, I don't think they will need you. I don't see why, do you, Mr. MacCrate?

MR. MacCRATE: Only if the letter on its face discloses something that --

THE COURT: If the letter is different than you testified you will have to appear.

Mr. Farrell, will you follow through on this so we are not delayed and he isn't held, Mr. Young shouldn't

be held from going where he is going?

MR. FARRELL: Yes, sir.

(Witness excused.)

THE COURT: Bring the jury back.

(Jury present.)

THE COURT: You may go forward, Mr. Farrell.

MR. FARRELL: Mr. Diaz-Hernandez.

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J E S U S D I A Z - H E R N A N D E Z , called as a witness by the plaintiff, being first duly sworn, testified as follows;

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Diaz-Hernandez, can you tell me what your employment was In October 1962?

A October 1962 I was executive director of the continental operations branch of the Economic Development Administration.

Q How long had you held that position?

A I held that position since 1960.

Q Prior to 1960 what was your employment?

A I came to the United States in February 17, 1957 to work for the Economic Development Administration as an assistant director of the rum promotion.

This department was entrusted with promoting the sales of Puerto Rican rum in the United States.

On July of 1957 I was promoted to director of the rum promotion department.

On the latter part of 1959 I was promoted to director of the Industrial Promotion Department. The function of this Industrial Promotion Department was to attract U. S. manufacturing plants to open operations in Puerto Rico.

In 1960 I was promoted to executive director and I also kept the position of Director of Industrial Promotion.

Q How many people were under you at that time when you were executive director of continental branch?

A I would say 100, 125 people.

Q Did EDA have offices in places other than New York?

A When I became Director of Industrial Promotion we had offices in New York, Miami and Los Angeles and Chicago. Later I opened offices in St. Louis, Boston, Philadelphia, Montreal and Toronto.

(Continued on next page.)

Q And you were in charge of all those offices?

A I was.

Q Would you tell us about your education? Did you graduage from college, Mr. Diaz?

A I graduated from the University of Puerto Rico in 1941 with majors in economics and accounting. And from '46 to 1948 I took my master's degree in business administration at the Wharton School of Finance and Commerce.

Q Is that in the University of Pennsylvania?

A University of Pennsylvania.

Q Now, Mr. Diaz, calling your attention to 1962, prior to 1962 had you held conversations with individuals who were proposing to promote or build a petrochemical facility in Puerto Rico?

A The promotional efforts to attract a third refinery to Puerto Rico -- and I say third, because at the time there existed two petroleum refineries in Puerto Rico -- the promotional efforts to attract a third refinery started in early 1961.

Q And what was the status of those efforts in the summer of 1962?

A The first group with which we dealt was disbanded in February or March of 1962. By disbanded I mean that the group could not come to an agreement among themselves.

Apparently there was not front money to pay for the necessary expenses, therefore, the group disintegrated in about March of 1962.

As of that date, Mr. Jack Coan and Mr. Oscar Chapman -- Jack Coan was a consultant, President of Omega Management; Oscar Chapman was a Washington lawyer -- these two gentlemen have been working with the first group. When the group disbanded, they continued their efforts to promote a third refinery, and some time in the middle of '62 they informed us thatthey have become associated with a gentleman by the name of Bruce Brown, and that they were going to go ahead with the idea of establishing a third refinery in Puerto Rico.

Q Thereafter, Mr. Diaz, did you speak to either Mr. Coan or Mr. Chapman concerning Mr. Brown's efforts?

A By June or July of 1962, from the correspondence we started getting the inkling that Mr. Bruce Brown was not going to be available or that Mr. Bruce Brown nas decided that it was not feasible to put the project together.

Q Mr. Diaz, in the fall of 1962, were you advised that Prudential Oil Corporation was interested in promoting a petrochemical complex in Puerto Rico?

MR. MacCRATE: Objection, your Honor.

THE COURT: Sustained. It is because of the

jklt 3 Diaz-direct

imperial "we." Was he advised that Prudential Oil Corporation- I want to know whether Mr. Shippee or Mr. Young or Mr. Willey or John Smith or Warburg or who -- when I say Warburg, I mean Blinken. Let's stick with people. That is the objection. Solely to form.

MR. FARRELL: I specified the corporation, your Honor.

THE COURT: No good, Mr. Farrell. Phrase another question.

Q Were you advised that a Mr. Shippee was interested in promoting the project?

A Around October Mr. Jack Coan informed us that a meeting has taken place between several gentlemen from E. M. Warburg, whose name I don't recall, Mr. Nathan Shippee, Mr. Willey, Mr. Coan, some gentleman from the firm of Kuhn, Loeb, some gentleman from the firm of Noyes and Hemphill. Therefore, we were advised.

Q I show you a copy of Joint Exhibit 38 and ask if this was delivered to you by Mr. Irizarry.

A Yes; this was a document in the files that I submitted to Mr. MacCrate, and it is a memo addressed by Mr. Jack Coan to Mr. Ivan Irizarry, who was one of the industrial representatives in the New York office, and who was handling this specific case.

MR. FARRELL: Now I am going to read this to the jury, your Honor, parts of it.

MR. MacCRATE: Before that, could we have the handwriting that is rather difficult to perceive identified.

Q Was this your handwriting, Mr. Diaz, at the top, below the date?

A Yes, it is my handwriting.

MR. FARRELL: Let me read the exhibit.

(Mr. Farrell read to the jury from Joint Exhibit 38 in evidence.)

MR. MacCRATE: May I ask that the handwritten notation be read by Mr. Diaz?

MR. FARRELL: I was just about to ask him to do that.

A "Ivan: this must be the last chance" --

THE COURT: "Chance" or "change"?

THE WITNESS: Chance.

THE COURT: Chance.

A "For C and C." C and C means Chapman and Coan. "Too many promises. No action. Let's see. J. Diaz-Hernandez."

THE COURT: You wrote that at or about the time you received the letter?

THE WITNESS: Yes, sir.

THE COURT: Mr. Irizarry was in the same office

where you were?

THE WITNESS: Yes, sir.

Q Now, in the latter part of December, Mr. Diaz, did Mr. Shippee bring you a presentation of a proposed petrochemical project for Puerto Rico?

MR. MacCRATE: Objection, your Honor, unless what is meant by a presentation is explained.

THE COURT: If the witness doesn't know what a presentation is, he can tell us.

You understand the question?

THE WITNESS: Very well.

THE COURT: All right, you may answer.

THE WITNESS: Around the latter part of December --

THE COURT: Can't you answer it yes or no, did he bring you such a presentation, or didn't he?

A THE WITNESS: Yes.

Q Did this presentation differ from the prior proposals which you had discussed concerning the Puerto Rican petrochemical project?

MR. MacCRATE: Objection, your Honor.

THE COURT: I think this witness is being asked for his opinion as to whether it differed.

MR. FARRELL: Did it differ.

THE COURT: They are all in evidence, aren't they? They speak for themselves. I will sustain the objection as to did it differ.

Q Did you, as a representative of EDA, find Mr. Shippee's proposal attractive, Mr. Diaz?

A Yes, I did.

Q And tell us the reason.

A The proposal incorporated several ideas which were appealing to me because they were in accordance with the criteria that we have developed in due time as to what should be the characteristics of the third refinery. These ideas that they incorporated could be enumerated as follows:

They were stimulating investment of local capital in the project; they were willing to appoint several prominent Puerto Ricans to the board of directors; they were willing to give preference to plants already located in Puerto Rico or willing to locate, to buy their petrochemical stocks as a result of this willingness to give this preference, the project implied a potential for future investment and future employment in satellite plants, using the production of the refinery.

They were willing to design a refinery flexible enough to serve the future needs of Puerto Rico. But I must state that this willingness was stated in words. It was not

backed by any design or any technical information that they might have submitted at the time. But at least the idea was there, that they were willing to do this, and they realized that the construction of the refinery should not be predicated on negotiating in advance long time contracts with users of the petrochemical feedstock; therefore there were all these characteristics, all these ideas were incorporated in this presentation, which were very attractive to us.

Q Did Mr. Shippee tell you at that time that he had a relationship with Phillips Petroleum?

A Well, in the presentation there was a letter --

Q Just so the record is clear, let me ask you about the letter.

I am showing you now Exhibit 215, Mr. Diaz, and I call your attention to a letter from Phillips to Mr. Shippee, dated November 13, 1962, and ask you if that is the letter you are referring to.

A Yes.

MR. FARRELL: For the record, your Honor, so that it is clear, that letter has previously been introduced as P-69.

THE COURT: All right. Let's go forward and examine the witness and we will work on the question of the record later on.

Q Mr. Diaz, did you have discussions with Mr. Shippee concerning the proposed project in March or April of 1963?

A Yes.

Q Now, can you tell me the content of those discussions?

A In December, when I saw the draft of that presentation, I told Mr. Shippee that the idea was good, but that it had two weaknesses:

The first one was the marketing, that nothing was said about the capabilities to market these petrochemical products.

The other weakness was that still at this stage they were using a lot of the technological data belonging to the previous project, to the UOP report. And our question was, if you admitted -- and this was addressed mainly to Jack Coan -- you have admitted yourself that the UOP report is not an economic feasibility report, is nothing but a technological report, it says what can be done, but really you're not saying if you're going to do it or if you can do it, and I remember that I told him, and this I told to Coan specifically, I told him, you have to convince Chapman, Shippee and the rest of the people that the only way this project would go through is if you associate yourself with

an oil company as a principal, not as a supplier, and as an assistant to help you do the things.

Q Mr. Diaz, turning your attention to the latter part of '62, did you meet with Mr. Anderson in New York at that time?

A I think I met Mr. Robert Anderson in the early part of '63. It was at the time that Mr. Durand, who was the administrator of the Economic Development Administration was in New York, and Mr. Nathan Shippee brought Mr. Robert Anderson to our offices for a meeting.

Q Did you discuss -- tell me the content of the discussion at that meeting.

A The idea of the meeting was to show Rafael Durand who was the administrator, and to show to me, that the group was associated with a knowledgeable and influential person like Mr. Bob Anderson, and we knew all the time that the third refinery could only be established if the Presidential proclamation establishing the oil import quota was amended, and they wanted to show to us that they had the political muscle to have the ears of the people that could take this action.

Q Mr. Diaz, in the spring, early spring of 1963, were you informed by Mr. Shippee that Phillips was working on the project?

A I remember, I told them, first in December I told them that they were weak in marketing and that at this stage they didn't know what they were going to produce, and at that point they told me that Phillips was going to make the marketing analysis.

Q Who is "they," Mr. Diaz?

A Shippee and Coan, but basically Coan. Most of my contacts were with Coan.

Q Did you meet in October, '63 with representatives of Phillips?

A Yes.

Q Do you know where that meeting took place?

A In my office.

Q Do you know who the representatives of Phillips were?

A I remember one of them, Paul Parker for some reason. I think he was a lawyer, white haired. We developed a good rapport, but I don't remember -- I know several people came to my office in the latter part of October, and they brought several charts, and they showed me the products, the name of the products that they were going to produce, and they showed me a chart which showed that in the course of seven to ten years the investment in the satellites could amount 100 and some odd millions.

Q Did anyone at that meeting tell you that Mr. Shippee was no longer involved in the project?

A I don't recall anybody making that statement.

Q Did anyone tell you that Prudential was no longer involved in the project?

A Nobody told me.

Q In December, 1963, Mr. Diaz, did you go to Bartlesville to visit with Phillips' executives?

A Yes, in December, I think it was 16th or something, I went to Bartlesville to visit the laboratories in Bartlesville and to visit with the top managements.

Q Do you remember who you met?

A I met a lot of people. I know, I distinctly remember Stanley Learned, who was my host there.

Q At that time, did anyone tell you that Mr. Shippee or Prudential were no longer involved in the project?

A No, sir.

Q Did Mr. Coan ever tell you that?

A No, sir.

Q Mr. Chapman ever tell you that?

A No, sir.

Q In July 1964, were you still a director of the continental branch of EDA?

A No, I resigned June 30, 1964, and I became a

consultant; therefore for the fiscal year beginning on July 1, 1964, I was a consultant. I was not anymore a director of the continental operation branch.

Q In your capacity as a consultant, did you consult with EDA concerning the proposed petrochemical project?

A Yes, I did.

Q During July, 1964, did you consult with Phillips or representatives of Phillips concerning the testimony before the Oil Import Quota Board?

A In July, 1964 I only participated in assisting in the preparation of the testimony to be submitted by Mr. Rafael Durand.

Q You did not speak to Phillips' representatives about their testimony?

A No.

Q Did you confer with Mr. Chapman concerning the testimony to be given by Mr. Durand?

A Oh, yes, we had several meetings in Washington concerning that testimony.

Q Did you confer with Mr. Anderson concerning Mr. Durand's testimony?

A Well, in July of 1964 we made a visit to Mr. Robert Anderson.

Q Who is "we"?

A Mr. Durand and myself, and in that meeting we discussed several matters; among them, Durand's testimony before the Oil Import Administration; we discussed the Internal Revenue Act of 1964, which was causing a lot of problems to plants in Puerto Rico; and we discussed golfing. Mr. Anderson was very concerned with his putting, it was very bad.

Q Mr. Diaz, I show you PLaintiff's Exhibit 150 for identification and ask if that is your diary or schedule or appointments for the year July 1964 -- I mean the month July, 1964.

A This is a copy of the document that I submitted to Mr. MacCrate. It is my handwriting, and it is entirely from July 1964 to November. I kept this diary because I was paid on a per diem basis and I had to submit a monthly report to be paid.

MR. FARRELL: Your Honor, I offer this.

MR. MacCRATE: I would like to inquire as to the purpose of the offer?

THE COURT: Perhaps counsel ought to approach the bench so you can be heard.

(At the side bar.)

THE COURT: Is there any mention of Prudential?

MR. FARRELL: Yes, there is. It is the 29th of July, there is an entry.

THE COURT: July 29 of 1964?

MR. FARRELL: July 23rd, I am sorry. The 29th was something else. It says Jack Coan, Prudential and Phillips.

THE COURT: Well, I suppose he can use this to refresh his recollection as to what if anything he had to do with Mr. Coan on that date concerning Prudential and Phillips. That would probably satisfy.

But as far as the exhibit is concerned that entry has no probative force. What does it tell us? He met with Coan and apparently it started about three o'clock.

MR. FARRELL: But it refers to the project.

MR. MacCRATE: No, it does not.

MR. FARRELL: Prudential-Phillips.

THE COURT: I don't take it to so state.

Is there an objection to this document?

MR. MacCRATE: Yes, there is.

THE COURT: I will sustain the objection but I will permit the document to be used to refresh his recol-

lection if he can't recall the substance of the meeting with Coan on the 23rd.

(In open court.)

BY MR. FARRELL:

Q Mr. Diaz-Hernandez, did you meet with Mr. Coan on July 23rd, 1964? Will you refresh your recollection?

A Seeing this I would say yes.

Q What did you discuss with Mr. Coan at that time?

A That is going too far.

Q Do you recall anything about the discussion?

A No.

Q Did you discuss the --

A I don't recall because I had so many meetings with Coan. It is not like meeting with somebody that you have once in a while but I was meeting with Coan all the time. I can't tell you.

Q Did he tell you anything with respect to Prudential during July of 1964 that you remember?

THE WITNESS: I don't remember, your Honor.

Q Did that entry on July 23rd, when it was made, accurately reflect the subject matter of your discussion with Mr. Coan?

MR. MacCRATE: Objection, your Honor.

THE COURT: If he knows. If he had a habit of

making accurate entries in his diary he can so tell us.

A I make accurate entries.

THE COURT: How much time did you spend during that day?

THE WITNESS: From 2 to 3 p.m.

THE COURT: You talked with Mr. Coan?

THE WITNESS: I talked with Mr. Coan.

MR. FARRELL: Your Honor, I ask that the witness be permitted to read that entry.

MR. MacCRATE: Objection, your Honor.

THE COURT: I will sustain the objection.

He can read it silently to himself.

MR. FARRELL: I want him to read it.

THE COURT: No, he can't read it to the jury.

MR. FARRELL: There is no objection --

THE COURT: I understand but he now testified that the diary indicates that he met with Mr. Coan on July 23rd between 2 o'clock and 3 o'clock and had a conversation concerning Prudential and Phillips.

I will permit that testimony to stand but he says he can't remember the contents of the conversation.

Is that correct, sir?

THE WITNESS: Yes.

THE COURT: All right. The record will so

indicate.

Q Mr. Diaz, at the time was it your understanding that Prudential was still working with Phillips on the petrochemical project?

MR. MacCRATE: Objection, your Honor.

THE COURT: I think under the circumstances of this case I will permit him to answer that yes or no. By Prudential you want to limit it to Mr. Shippee and Mr. Young and Mr. Willey?

MR. FARRELL: Yes, the individuals.

THE COURT: All right.

A Nobody led me to believe they were not working on that.

MR. FARRELL: That is all I have of this witness, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MacCRATE:

Q MR. Diaz-Hernandez, you referred to a meeting in October 1963 that you had with Mr. Paul Parker?

A Yes.

Q Do you recall who came with MR. Parker that day?

A I don't recall exactly. There were other

people.

Q Were there people other than Phillips people present?

A I don't recall. I have to answer there were only Phillips people.

Q Prior to that time had Mr. Coan spoken to you about Phillips?

A Yes.

Q Had Mr. Coan done anything to arrange for this meeting with you?

A Yes.

Q But you don't know whether he accompanied the Phillips personnel on this meeting or not?

A I don't recall it.

Q When you went to Bartlesville late in December or in December of 1963, did Mr. Coan go with you?

A I don't think so.

Q Was he there at or about that same time in December of 1963?

A I don't think so. He is not there.

Q Do you recall speaking with Mr. Coan about the arrangements for that meeting?

A Definitely, he arranged that trip.

Q Around that time, in December of 1963, did you

receive from Mr. Stanley Learned a letter?

A I brought a letter with me from Bartlesville that I delivered to Mr. Durand later.

Q You took a letter in December 1963 from Bartlesville to San Juan?

A Yes.

Q And delivered it to Mr. Durand?

A Yes. I took that letter.

Q Mr. Diaz-Hernandez, I show you an exhibit that has been marked J-43 in these proceedings snd ask you if that is a copy of the letter that was taken by you from Bartlesville to San Juan in December of 1963?

A Yes, it is.

Q Did you discuss the letter with Mr. Durand in San Juan at that time?

A Yes, sir.

Q Do you recall where you had that conversation?

A Not specifically.

Q Do you recall what you said to Mr. Durand and what Mr. Durand said to you?

A I remember he was very much pleased with the letter but the exact words I don't remember.

Q Did you say anything to Mr. Durand at that time that you can recall?

A I remember I explained to him the result of my visit. I told him that I was very much impressed with the Phillips operation.

I told him that Phillips was a leader in patents and in spire of the fact that it was a relatively small company compared to the big ones, the proportion of patents that they received every year was far greater than a company for its size.

I explained to Mr. Durand the program that Phillips had of working joint ventures with producers of consumer goods and helping with investments.

As a matter of fact I remember that I specifically mentioned a case for Coca-Cola that was shown to me at the laboratory at Bartlesville.

Those were the things that I mentioned to Mr. Durand.

Q As a result of that conversation with Mr. Durand was any action taken by you or by Mr. Durand?

A We invited the Phillips people to visit Puerto Rico which they did around January 2nd or 3rd.

Q Were you there at the time of that visit?

A I was there.

Q Could you tell us just briefly what took place that you observed?

A Well, in that case I may have acted as social director. I took them around. I attended to the first meeting where they made a presentation more elaborate than they had made in October.

Q This was an oral presentation?

A I think they made it orally but they took with them a written presentation if I recall correctly. I don't know if it was sent later but I know that we had a meeting at the beginning where Stanley Learned -- I don't know if it was Mr. Hewitt or Waldby, make a presentation to the whole Economic Development Administration staff.

Q Do you recall any result of that meeting?

A As a result of that meeting in January 14 we applied for a quota on behalf of Phillips, increasing the quota, the oil import quota to Puerto Rico of 50,000 barrels.

Q In other words, for the first two refineries there were already quotas so this was an increase?

A Increasing the quota to be devoted to this third refinery which was going to be Phillips.

Q During the period 1961 to the end of 1963, had there been various proposals made to EDA for a third refinery?

A Yes.

Q Can you identify some of the persons who came to you?

A From 1961 to late 1963?

Q The time of the visit of Phillips to San Juan?

A In 1961 we had the first group which was eventually incorporated in Puerto Rico with the name of Petro Quimica Puertorriquena which we used to call them PPI.

Q Was there a Mr. Krisell who also approached you at that time?

A Krisell is an appendix of this thing.

THE COURT: Of PPI?

THE WITNESS: No, Krisell went directly to Puerto Rico and later sued the Government. Krisell was handled by Sam Van Hyning and that happened around the middle of 1961 if I recall correctly.

But I didn't have much -- I only wrote a letter in the Krisell case stating that they should not support Krisell because we were already talking to other people. I think he was in 1961.

Q Were there approaches by oher major oil companies?

A Yes, Texaco in the latyer part of 1963. We took a presentation of Mr. Cordell Moore and Mr. Thomas

Nediker. Moore used to be the head of the Oil Import Administration and we took this presentation from Texaco.

Q In addition to Texaco were there other oil companies?

A Yes. I discussed with Whaley in Ashland Oil. The discussion started in 1963 but I think his presentation was made in February, somewhere around 1964 and we have already backed Phillips.

We had disccussions with Esso which later became Exxon.

I had discussions with Union Texas, I had discussions with Monsanto.

That is as far as I can recall.

Q What was the division of responsibility on new projects between New York and San Juan?

A Well, the Economic Development Administration was composed of mainly three branches. The Economic Development Administration per se, which was a regular Government agency.

The Puerto Rican Industrial Development Company which was a Government instrumentality but was composed by the Administrator of the EDA. In other words, the Administrator of the Economic Development Administration had functional authority over the Puerto

Rico Development Company.

And the third branch was the Continental Operations Branch. The Continental Operations Branch was the promotional arm of the operation. We did the processing, the advertising, the direct mail. We had discussions with manufacturers here and we tried to convince them to visit Puerto Rico to consider opening operations in Puerto Rico.

When they woudl visit Puerto Rico we would have a counterpart in Puerto Rico which was a promotional department that will take them around show different plants and add whatever information we have missed.

If they were willing to lease a building, to go to the Puerto Rico Industrial Developement Company which was a financial arm of the operation. They possess all the buildings and being an instrumentality they could issue bonds and they had incentive programs and could do what a regular Government agency was not able to do.

Q And the decision with respect to what kind of assistance in support would be given would be given would be made in San Juan?

A What type of assistance are you referring to?

Q You are referring to the support of the Puerto Rican Development Bank?

A There was an incentive program which was clearly stated and we used to offer incentives. The incentives were based on the number of employees which the plant will start with, employment growth, size of the plant. But this was spelled in what we used to know as the incentive memorandum.

We would offer it here and the financial negotiations, they would say we will give you $30,000, $40,000. But the commitment had been made here and it was implemented, the financial implementation was made by PRIDCO.

Q The tax exemption, how would that be handled?

A With respect to tax exemption, there was a lawyer in the New York office, Joe O'Connor and what we used to do, we would prepare all the forms that were necessary and submit to the prospect a list of lawyers for him to pick whatever he wanted.

But a lot of the leg work was done by our lawyer in New York so he would go to the lawyer in Puerto Rico, a lot of the forms would have been prepared.

(Continued on next page.)

Q And then the request for the tax exemption would be presented in Puerto Rico?

A In Puerto Rico, because the tax exemption of this was in Puerto Rico.

Q And with respect to a decision to give official support for a proposal such as was given for Phillips in support of the application for the oil import quota, was that in San Juan?

A That was the exclusive prerogative of the administrator, with my recommendation.

Q An administrator has responsibilities with respect to all of these agencies you have referred to?

A He is the head of all of these agencies.

Q During the period 1961 to 1962, did Jack Coan have a retainer from EDA?

A Not from the Continental Operation Branch. In 1962 he did some work for EDA. He did some research, if I recall correctly, regarding the intentions of manufacturers operating in Puerto Rico whose tax exemption was going to be exhausted in the next two or three years. I think he did --

Q Had EDA asked him to examine what the various manufacturers were going to do who were already located in Puerto Rico, and whose tax exemptions would be expiring within

a short period of time?

A That was the only work he did for the Economic Development Administration, that's right.

MR. MacCRATE: That concludes my cross examination.

THE COURT: Any redirect for this witness?

MR. FARRELL: No, your Honor.

THE COURT: Thank you very much, Mr. Diaz-Hernandez. You are excused.

(Witness excused.)

MR. FARRELL: Your Honor, I had expected Mr. Diaz to spend the rest of the day --

THE COURT: Didn't you have some depositions you wanted to read?

MR. FARRELL: I have some depositions, but overnight I was going to get copies for you and I haven't done that. That's my only problem.

THE COURT: Are they controversial?

MR. FARRELL: Mr. Rigney said there was one controversy.

THE COURT: Will counsel approach the bench?

(At the side bar.)

THE COURT: Off the record.

(Discussion off the record.)

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(In open court.)

THE COURT: Members of the jury, you will be excused at this time. Kindly return at 10:15 tomorrow morning. Please withdraw from the courtroom.

(Adjourned to January 14, 1976 at 10:15 a.m.)

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PRUDENTIAL OIL CORPORATION

vs. 67 Civ. 3748

PHILLIPS PETROLEUM COMPANY.

New York, January 14, 1976:
10.15 o'clock a.m.

(Trial resumed.)

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(Jury present.)

THE COURT: Mr. Farrell, you may proceed.

MR. FARRELL: Your Honor, the one previous detail from yesterday is I have a copy of the letter which Mr. Young tesrified about.

THE COURT: Mark it for identification and show it to Mr. MacCrate.

(Plaintiff's Exhibit 226 was marked for identitication.)

xx THE COURT: You may come back to the letter at the next recess. You don't have to take it up at this time unless you wish to.

MR. FARRELL: Mr. Young would like to return if Mr. MacCrate does not need him any longer. I would like to let him go.

MR. MacCRATE: I would ask, your Honor, that

THE COURT: Mr. Young will be recalled solely in connection with the letter.

- -

T H O M A S R. Y O U N G, having been previously duly sworn, resumed the stand and testified further as follos:

THE COURT: Mr. Young, you are reminded that you are still under oath in this case.

THE WITNESS: Yes, sir.

THE COURT: Mr. MacCrate, you may examine with respect to the letter.

CROSS EXAMINATION

BY MR. MacCRATE:

Q Mr. Young, did you receive the original of this letter which has been marked as Plaintiff's Exhibit 226 for identification?

A Yes.

Q Did you receive it on or about February 12, 1973?

A Yes.

Q Did you receive it in the mail or was it delivered to you in person?

A It was in the mail.

Q Where is that letter today?

A I believe it is where I testified yesterday, in my home.

Q The first sentence of the letter refers to an enclosure. What was the enclosure?

A I don't recall the enclosure exactly. I can't say and I don't think I saved it.

Q Who is miscellaneous?

A Written below, miscellaneous.

THE COURT: That is meant to be humorous?

A A mistake and somebody put it there I believe. I don't know.

THE COURT: Who is miscellaneous?

THE WITNESS: I can only assume miscellaneous expenses that --

Q This enumerates 10 per cent for Mr. Shippee, 10 per cent for Mr. Wiley, 10 per cent for Mr. Young and 10 per cent for miscellaneous.

Is miscellaneous people, things, companies? What is miscellaneous?

A I can only assume it is expenses of some sort, whether legal fees, I don't know.

I received a letter, I had no conversation with Mr. Shippee about the letter so I read it and stuck it in my file. I think I stuck it in my file.

Q In your testimony yesterday you placed the time of the letter somewhat earlier than this. Did you receive another letter prior to this letter addressed to you?

A Not to my recollection. I thought I received it some time after the time of the deposition. I don't think it was somewhat earlier.

Q Was this the first communication you had from Mr. Shippee referring to a percentage participation in this action?

A The first I think -- this is the first direct communication I had.

Q What indirect communications did you have?

A Conversations.

Q When were those conversations?

A I think there was an original conversation way back in the early stages.

Q Can you fix what you mean by early stages?

MR. FARRELL: I object. We had all this yesterday and Mr. MacCrate requested the letter and now he is going right back and rehashing the stuff he asked yesterday.

THE COURT: Is there an open question?

(Question read.)

THE COURT: I will permit that to be asked.

A I would say prior to this letter.

Q Prior to February 1973?

A Yes.

Q How long prior to February 1973? Within a few weeks or speaking about something in 1972, 1971?

A I can't say exactly when they were. There were probably the one conversation I mentioned yesterday at the lunch, at the time of the depositions with the lawyer from Palmer, Serles.

Q Mr. O'Neill?

A Mr. O'Neill, yes. And I think I had one or two conversations with Mr. Shippee between that time and this letter.

Q Prior to the luncheon conversation at which Mr. O'Neill was present, had you had any conversation with Mr. Shippee about the percentage participation?

MR. FARRELL: Objection again. This is repetitive and was covered yesterday and the purpose was to produce the letter and he produced the letter.

THE COURT: It is not entirely clear to me what participation this witness had, when he acquired it, how long he had it and how and why the numbers changed and I am inclined to permit Mr. MacCrate to develop that if he wishes

but please don't take too long about it.

A There was a street corner conversation way back early in the picture when Mr. Wright was present and in fact Mr. Wright made the comment that, well, you fellows split it three ways, words to that effect.

Q Let's stop there. You say early in the picture?

A Yes.

Q Can you fix that in relation to any event?

A I think it was about the time that Prudential decided that it would have to sue Phillips for running off with the joint venture.

Q Can you fix that in time, Mr. Young?

A It would be probably in 1966 I owuld guess.

Q This street corner conversation --

A 1967 maybe.

Q -- took place some time in 1966 between you, Mr. Wright. Anyone else present?

A Mr. Shippee and Mr. Willey. We had just been talking to Mr. Wright in Mr. Anderson's office and I don't recall, I don't think Mr. Anderson was at the office at the time.

Q And Mr. Wright pointing to you, you and Mr. Shippee, and Mr. Willey, said, you three would share?

A He didn't do any pointing, and he didn't say--- it was a general comment that he said you have a good cause, and you split it three ways.

Q Did Mr. Shippee make any comment in response to Mr. Wright's statement?

A Very likely. I don't recall any specific comment.

Q Did Mr. Willey make any statement?

A Again, I don't recall any comment at that time.

Q After the three corner conversation in 1966, when was the next time that participation was discussed by you?

A At the deposition. I think you asked me or someone asked me the same question.

Q And your testimony on the deposition was the next time that anyone had raised the subject with you?

A To the best of my recollection.

Q When following the deposition was it next discussed?

A I think I already testified to that, was it O'Brien?

Q O'Neil.

A O'Neil of Palmer and Searles at that luncheon meeting right after the deposition.

Q And when after that luncheon was it next discussed?

A I don't remember specific dates.

Q Well, can you identify any occasions?

A No, I cannot.

Q Can you recall any time between the time of the lunch with Mr. O'Neil and February, 1973, when the subject was discussed with Mr. Shippee or Mr. Willey or with anyone else?

A I just recall now that I saw Mr. Willey in Texas and asked him or said to him I thought we should put something in writing, and he said, "Well, I think we have something in writing."

And I said, "Gee, I will call Mr. Shippee and ask." And I think I called Mr. Shippee after that trip.

Q And what did Mr. Shippee tell you at that time?

A He said he'd write me a letter.

Q Can you fix the time of that conversation with Mr. Shippee and his undertaking to write you a letter?

A Well, it was some time prior to this, and I

don't think it was very long prior to this. And I think the time of my discussion with Mr. Willey was also just prior to this.

Q Did Mr. Willey ever show you what there was in writing?

A No. I met Mr. Willey in Houston. I was away from my office, he was away from his office. We both were down there on separate business things, and we happened to meet in Houston, and we had a short conversation in this regard.

Q Well, did you ask Mr. Willey what he had in writing?

A No.

Q And he did not tell you what he had in writing?

A No.

Q He didn't indicate whether it was an exchange of correspondence or a written agreement?

A No.

Q Did he mention any percentages that he had in writing?

A No.

Q Was there any discussion between you and Mr. Willey on this occasion of what your percentage participation might be?

A No.

Q Did you at any time learn that Mr. Willey at some time in the past had been down for a percentage participation of twenty-five years?

A No.

Q Did you ever learn that anytime in the past that Mr. Willey's percentage had been suggested by Mr. Shippee as fifteen percent?

A I learned -- I saw a letter to that effect in Mr. Farrell's office this past weekend, and it was the first time I had seen that letter.

Q And did you see at the same time or at any time prior thereto, a letter in which Mr. Willey was suggesting a twenty percent for himself?

A No, sir.

THE COURT: At this present time, do you have any business relationship with Prudential other than you have testified to in this trial?

THE WITNESS: No, sir.

THE COURT: And in February, 1973, did you have any business relationship with Prudential other than what you testified to in this trial?

THE WITNESS: No, sir.

THE COURT: How about Mr. Shippee?

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THE WITNESS: No, sir.

Q Mr. Young, I show you P-202, and ask you whether that refreshes your recollection as to anything you may have been shown regarding a suggestion by Mr. Willey of a twenty percent interest?

A I saw this letter yesterday for the first time, when I went to collect this from Prudential's office.

Q You saw P-202 for the first time when you went to the Prudential office yesterday to collect D-226?

A Yes.

Q Did you ask at any time what miscellaneous related to?

A No.

Q Did you at any time inquire --

MR. MacCRATE: I withdraw that.

I have no further questions on the document, your Honor.

THE COURT: Anything else, Mr. Farrell?

MR. FARRELL: No, your Honor.

THE COURT: Thank you, Mr. Young. You are now excused.

THE WITNESS: Thank you, your Honor.

(Witness excused.)

MR. MacCRATE: I would ask that the document

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be received in evidence.

MR. FARRELL: No objection.

THE COURT: It will be received in evidence.

(Exhibit P-226 was received in evidence.)

MR. FARRELL: Your Honor, at this time I would like to read from depositions.

THE COURT: May the Court be provided with the depositions, please?

MR. FARRELL: Yes, Mr. Rigney has them.

(Handed to the Court.)

MR. FARRELL: Your Honor, in order to save the time of the Court, I am not going to play act the depositions. I am simply going to read them.

THE COURT: All right.

So the jury will understand that comment of counsel, occasionally where there are lengthy depositions, to make it easier for the jury, we put an attorney or some person on the witness stand and take the part of the person whose answers are being given. Under these circumstances, Mr. Farrell has undertaken to give both the questions and answers himself, to read them into the record, and you are instructed that these depositions represent sworn testimony of the people whose testimony is being read; given at a time prior to the trial, and you may treat this testimony

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just the same as if these persons had come into the court and been duly sworn and sat on the witness stand and were asked these questions and gave these answers. And our primary purpose here, of course, is to save time and shorten the trial.

MR. FARRELL: This is from the deposition of Miller W. Conn, taken on April 5, 1972:

"Please state your name.

"Miller W. Conn."

THE COURT: Excuse me, I think I"m going to have to ask you to read it in this fashion:

"Question: Please state your name.

"Answer: Miller W. Conn." Just so we don't get confused here.

MR. FARRELL: All right:

"Q Please state your name.

"A Miller W. Conn.

"Q Where do you reside?

"A 17 Normandy Road, Greenville, South Carolina.

"Q Are you presently employed by Phillips Petroleum Company?

"A No.

"Q When did your employment cease?

"A May 31, 1968.

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"Q What position did you hold at that time?

"A I was manager of sales and development division, and international department.

"Q Where was your office?

"A 80 Broadway, New York.

"Q How long did you hold that position?

"A I don't remember.

"Q Did you hold it in 1962?

"A Yes.

"Q Did you hold it prior to 1961 for some time?

"A I don't remember.

"Q When did you first come to Phillips as an employee?

"A 1936.

"Q Do you recall whatposition you had at that time?

"A No.

"Q Do you recall where your office was at that time?

"A Yes.

"Q Where was it?

"A First National Bank Building, Bartlesville, Oklahoma.

"Q Did there come a ti e when you were transferred

jklt 9 "Conn

to New York?

"A Yes.

"Q Do you remember when that was?

"A In 1959.

"Q Do you remember what position you had in 1959 when you were transferred to New York?

"A I was assistant manager of the foreign sales and development department.

"Q From then did you move to the job that you held in 1961?

"A Yes.

"Q Mr. Conn, I want to show you a document which has previously been marked Plaintiff's Exhibit 8" --

THE COURT: Excuse me, what is the number of that in this trial?

MR. FARRELL: Your Honor, I am reading from a counter-designated portion that Mr. MacCrate wanted me to read. I do not have it.

THE COURT: Then Mr. MacCrate will have to give us the number. I don't want you to read prior numbers because it is confusing for the record. I don't mean that as a criticism.

MR. FARRELL: No, I understand.

THE COURT: The current numbers have to be

jklt 10 "Conn

used.

MR. FARRELL: I understand.

Mr. MacCrate counter-designated certain portions that he thought would make it clearer.

THE COURT: All right. Let's have the proper number of it.

MR. RIGNEY: Your Honor, I believe the page that was just read from was designated by the plaintiff.

THE COURT: Regardless of who designated it, I'd like every attorney in this room to devote a little attention to see if he can find the correct number.

MR. FARRELL: That would be rather simple, your Honor.

THE COURT: Would counsel approach the bench, please? Perhaps I can shorten this matter.

(At the side bar.)

THE COURT: Gentlemen, looking at page 5 of Mr. Conn's deposition, it seems to me whatever this document is, this testimony is of no help to any party, because here is a document which, if it is in evidence, shows on it the words "carbon copies" to certain persons. Jurors are entitled to infer that there is a regularity on the handling of papers.

If a document says that Mr. Fischbeck received a copy, then he did so. The rest of these questions on

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page 5 are all things which a jury could infer from the ordinary pattern of regularity of any business establishment, and the answer at the top of page 6 is certainly inconclusive, so I don't know why we need to pursue it, regardless of who designated it.

MR. MacCRATE: Your Honor, the exhibit is a stipulated exhibit, J-26.

THE COURT: All right. J-26 shows on its face that carbon copies went to three persons thereon named, and I think the jury can infer, and that no one can argue to the contrary, that in the normal course of Phillips' business if they had a memorandum that said on there, "Carbon copies to Messrs. Parker, Conn and Fischbeck," that those individuals did receive copies at or about the time of the date of the memorandum. And anyone contending to the contrary, has a duty to come forward with evidence.

I don't see why we have anything here to fool with.

MR. FARRELL: I agree.

THE COURT: I mean, to be concerned with.

MR. MacCRATE: I have no interest in this portion of the deposition.

THE COURT: Very well. Let's go on to something else. But I must have the papers identified.

(Discussion off the record.)

MR. FARRELL: I will not continue to read that portion but since I did say Plaintiff's Exhibit 8, I would say that in this record that is Joint Exhibit J-26.

THE COURT: All right, that particular question at line 9 on page 5 of Mr. Conn's deposition will be stricken. That is on consent as I understand it.

MR. FARRELL: Yes.

THE COURT: Perhaps we should have a brief recess at this time and I would like to ask you to see if you can't eliminate any cumulative matters here by stipulation as to the contents of what the balance of Mr. Conn's testimony is where it is not at variance with any other matter and both sides are not in controversy over it.

We will take a very brief recess.

(Recess.)

THE COURT: Could I see Mr. Farrell and Mr. MacCrate, off the record.

(Discussion at the bench off the record.)

(Jury present.)

MR. FARRELL: I will continue, your Honor, with the deposition of Mr. Conn, page 82.

Your Honor, rather than read this section I will offer the exhibit referred to in the middle of the

ars "Conn

page which has been marked at this trial as Plaintiff's Exhibit 129 for identification.

THE COURT: Any objection?

MR. MacCRATE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 129 for identification was received in evidence.)

MR. FARRELL: I will read the exhibit, your Honor.

(Exhibit read.)

MR. FARRELL: Now, I am reading from the Conn deposition starting at page 39, line 6:

"Q Do you remember discussing Phillips' interest in a Puerto Rican petrochemical project before August 9?

"A Yes.

"Q Where were those discussions held?

"A I will change that answer. I don't remember discussing Phillips' interest in a project before August 9."

THE COURT: What year?

MR. FARRELL: This would be 1963.

"Q Do you recall discussing a Puerto Rican petrochemical project before August 9?

"A Yes.

"Q When did those discussions take place?

"A In Washington.

"Q When?

"A The date is August 7 I think.

"Q August 7?

"A Yes.

"Q Where did they take place?

"A In some luncheon club in Washington, D.C. I was accompanied by Mr. Carson Black of our Washington office.

"Q Who else was there?

"A Mr. Oscar Chapman and one of his associates.

"Q Had you met Mr. Chapman before that?

"A No.

"Q Do you know how this meeting came about?

"A Yes.

"Q Tell me how it came about?

"A I called and asked Mr. Chapman for an appointment.

"Q Had someone from Phillips told you to do that?

"A Yes.

ars "Conn

"Q Who was that?

"A Mr. Keeler.

"Q What did Mr. Keeler say at that time?

"A He simply asked me to go down to Puerto Rico and discuss a refinery project.

"Q You mean to go to Washington?

"A Yes, to go to Washington and discuss a project, I don't know, refinery, petrochemical or what, with Mr. Oscar Chapman.

"Q Did he tell you anything else?

"A Not as I recall."

That is all from the deposition of Mr. Conn.

Now, I will read from the deposition of Mr. Fischbeck starting at page 37.

(Continued on next page.)

"Q Mr. Fischbeck, I show you Plaintiff's Exhibit 227 for identification and ask you whether the entry bearing Mr. Shippee's name indicates that you had a meeting with Mr. Shippee on that date?"

The date is January 3, 1963.

"A To the best of my knowledge.

"Q Do you recall who was at the meeting?

"A If this was the first meeting, Mr. Conn, myself, Mr. Shippee and Frank Page.

"Q What was Mr. Page's position at that time?

"A Mr. Page was in charge of sales of petroleum products.

"Q Was his office in New York?

"A Yes.

"Q Do you recall where the meeting took place?

"A As I recall, it took place in Mr. Conn's office.

"Q Do you recall what was discussed?

"A Mr. Learned's letter .

"Q What was the substance of the discussion?

"A The substance of the discussion was that Mr. Conn asked Frank and I to work together to carry out the guidelines as set forth in Mr. Learned's letter."

Going over to page 91, page 90, actually.

jklt 2 "Fischbeck

"Q I call your attention, Mr. Fischbeck, to the entry in your diary for March 27, 1963, particularly the language, '12/430 (the transcript reads) Puerto Rico', and the language immediately following, and I ask you whether that refreshes your recollection that you had a meeting with Mr. Shippee on that day?

"A We did.

"Q Do you recall what happened on that day?

"A We went to lunch together at the Talisman, and we renewd acquaintances with Ter Porten, and we generally had a real sociable visit.

"Q Who is Ter Porten?

"A He is a man of Dutch descent employed by Brown and Root Company in Houston, Texas.

"Q Do you recall that you knew Mr. Ter Porten before this lunch?

"A Yes.

"Q Was Mr. Page at the lunch?

"A Yes.

"Q Was Mr. Smith at the lunch?

"A Yes.

"Q Was Mr. Shippee at the lunch?

"A Yes.

"Q How about Mr. Young?

jklt 3 "Fischbeck

"A Yes.

"Q Anyone else that you know of?

"A Myself.

"Q Anyone else besides that?

"A I don't recall anyone else. These are all the names I have here.

"Q Do you recall anything else that was discussed at the lunch?

"A We discussed the generalities of the project. I endeavored to determine or ascertain, rather, just waht is the status. At this time, as I recall, Mr. Shippee insisted that in order to obtain a crude oil import allocation that it would be necessary for Phillips to take a more active part and get one, which I thought was a switch over the original understanding.

"We generally visited, and in view of that, I thought the time had come for my management to direct any further course of action that we had with Prudential, hence I wrote my letter the next day.

"Q In other words, you determined that any decision had to be made at a level higher than you?

"A Yes."

The next deposition, your Honor, is from William Keeler. This is from page 36 of the deposition of

jklt 4 "Keeler

William Keeler:

"Q Did you know Mr. Anderson prior to the time that he became Secretary of the Treasury in connection with his work on the Waggoner estate?

"A No, I had nothing really invovled in that.

"Q Getting back to my initial question, in November of 1962, what did you understand, if any, was Mr. Anderson's relationship or employment by the Phillips Petroleum Company?

"A Well, let's see now, can you give me a date when he came out of the Interior -- out of the Treasury Department?

"Q Some time in 1961.

"A Some time in 1961?

"Q Yes.

"A Some time, some time not too long after he came out of the Secretary of the Treasury, he was retained by Phillips as a consultant.

"You asked whether I knew about it?

"Q Yes; and what was the nature of the project or projects that he was to consult on?

"A Well, he was -- to give -- bring to us any possibilities that he ran into that he thought that we might have some interest in for us to look them over.

"Q In terms of new projects and devlopments?

"A New projects and developments.

"Q And did he do so?

"A Yes. He did. I was involved with him on several of those.

"Q Can you just identify the projects?

"A Well, one project was a possibility of a refinery and oil concession in Manilla. One was to -- for substantil sale of heavy oil, highly viscous oil, to Japan, which could either be used as -- and blended down to bunker fuel oil, or -- I forget -- or to use as a road oil to go to Japan. And we did have such a -- such crude oil down in South America and we looked into that possibility with Mr. Anderson, but we didn't make any sort of -- I remember that he had advised us of -- of some other oil concession possibilities that we -- that he expected to be able to get us in contact directly with certain countries where he, knowing some of the individuals there, he was doing a lot of traveling all over the world, that he might be interested in the concession.

"We did ask our international department to look into those, but -- in those cases, we weren't interested in the concessions.

"I think that he brought a possibility of a

jklt 6 "Keeler

Liberian tanker program to us once, which we looked into and decided that we were not interested in.

"He gave us, on questioning on our part, some advice and counsel on what he thought the political climate was in certain countries. That sort of thing would be the --

"Q How was Mr. Anderson compensated pursuant to his arrangement with your company?

"A Well, I know at a later date he was compensated by a, I believe it was a monthly payment which -- and I have forgotten the name of his organization. I don't recall just now what it was, but --

"Q Do you recall the dimension of the compensation?

"A It seems to me that it -- at one juncture, now, I don't know that I knew what it was firmly, but it seemed to me it was in the neighborhood of around $75,000.

"Q Per year?

"A Per year.

"Q In addition to that compensation, did Mr. Anderson receive any interest in any of the projects that he brought to Phillips' attention?

"A No. We never went ahead with any of the projects."

jklt 7 "Keeler

Turning to page 44 of the Keeler deposition, your Honor. This has been corrected and I will read the original and the corrections after I have read the original.

THE COURT: All right.

MR. FARRELL: The top line of 44 is the answer. The previous question was concerning Mr. Keeler's diary:

"A 'Washington, D.C., S. S. Learned, part of presentation to Interior.'

"Q Can you tell me what that relates to?

"A Yes. I think this means that I was to go with S. S. Learned ---

"Q That is Stanley Learned?

"A Stanley Learned, to go" -- I will read the corrected part -- "go with him in regard to a presentation to Interior Project.

"Q Of the Puerto Rico project?"

The original answer --

MR. MacCRATE: Your Honor, I object. He's taking some of the corrections and not the others.

THE COURT: Well, the one on line 8 is so trivial, Mr. MacCrate. It is a trivial correction. I don't know why we have to hold up the trial with it. I will permit them all to be read, if it is considered significant.

MR. FARRELL: Right. I think the next one

is, your HOnor:

"A I assume this is the Puerto Rican project."

Then there is a correction:

"No. This was in connection with a seminar on natural gas and petrochemicals at which Phillips made a prsentation to the Interior Department explaining how Federal Power Commission regulations was having a detrimental effect on the discovery of new natural gas reserves. This meeting did not involve the project for Puerto Rico."

THE COURT: Members of the jury, so that you can understand this, the practice with respect to these depositions is to have them transcribed or typed up by the shorthand reporter who has recorded it, and to furnish them to the person who gave the testimony to be signed and sworn to before a notary public. Such a person can attach at the end of his deposition corrections, where he finds out that in his opinion he didn't answer correctly in the first instance, or that he believes the shorthand reporter didn't get the answer correctly, didn't record him correctly, and in either of these cases, the law permits counsel to read the original answer at the end of the deposition, which has been attached, and that's what's been done here.

MR. FARRELL: Your Honor, I would like to state for the record that the date of the deposition was January 17, 1973. The date of the correction is September

18, 1975.

THE COURT: All right.

MR. FARRELL: I should also like to state the question and answer referred to a meeting of March, 1963:

"Q Do you recall that Mr. Chapman was with you?"

This is the original answer:

"A Mr. Chapman, I believe, in every case where the Secretary was involved and present, I think Mr. Chapman was present. I attended some meetings with Mr. Kelley in which-- in connection with the Puerto Rican project that Mr. CHapman was not present at, but Mr. Friedman of his firm was present."

The corrected answer:

"A No, however, in connection with the Puerto Rican project Mr. Chapman, I believe, in about every case where the Secretary was involved" --

MR. RIGNEY: It is "almost".

MR. FARRELL: Sorry:

"-- almost every case where the Secretary was involved and present, I think Mr. Chapman was present. I attended some meetings with Mr. Kelley in which -- in connection with the Puerto Rican project that Mr. Chapman was not present at, but Mr. Friedman of his firm was present.

"Q Can you think of any other presentations to the Interior that that reference might relate to?"

Then there is a discussion off the record.

"Q March, 1963?

"A No, I don't -- I don't think of any other."

Now, continuing -- top of page 130, your Honor:

"Q You received a copy of Plaintiff's 229, did you not?

"A Yes, but I didn't receive a copy of this."

That is Joint 45.

MR. MacCRATE: I believe, your Honor, there may be a numbering difficulty.

THE COURT: Are we clear about 229?

MR. MacCRATE: No, that is theone I have the question about.

THE COURT: All right.

MR. MacCRATE: 221 is J-45. Now, the other document is what?

THE COURT: Off the record.

(Discussion off the record.)

(Mr. Farrell reading:)

"Q You received a copy of Plaintiff's Exhibit 229, did you not?

"A Yes, but I didn't receive a copy of this.

"Q That is Joint Exhibit 45?

"A That's right.

"Q They relate to the same petrochemical complex?

"A I said I saw that but I didn't see this.

"Q They contain the same letter from Mr. Learned to Mr. Durand, do they not?

"A I haven't compared them and I don't know. Do you want me to compare them for you?

"Q Well, if you would like to see whether the letter is the same --

"MR. MacCRATE: What is the point, Mr. Marks? The document speaks for itself."

MR. RIGNEY: Are we going to have colloquy?

THE COURT: I hope not. It does speak for itself. But I suppose that there will come occasions where colloquy explains the next statement by the witness. But in this case, I think we ought to pass right on over.

MR. FARRELL: I will do that.

THE COURT: And pick up again on the next page. Or wherever you want to.

(By Mr. Farrell:)

"Q I show you Defendant's Exhibit 215, and ask you to compare that, which is Mr.Shippee's report"--

THE COURT: I think again, that is a question

that wasn't answered. Isn't that so? Let's go right down to line number 18, if you would like, or go forward.

(Mr. Farrell reading:)

"Q Mr. Keeler, did you direct anybody to copy Mr. Shippee's report on behalf of Phillips Petroleum Company?

"A I didn't.

"Q And to your knowledge, did anybody at the Phillips --

"A As far as I know -- we never had one.

"Q Well, I understand that. That is your position.

"Did you discuss Mr. Shippee's report with anybody at Phillips Petroleum?

"A No.

"Q To your knowledge, did anyone at Phillips Petroleum use Mr. Shippee's report in preparing Joint Exhibit 45 or any other material used by Phillips in connection with its oil import application?

"A Not to my knowledge.

"Q You certainly gave no one authority to do that?

"A No.

"Q Do you have any explanation for the fact that

the first sentence of each of the documents in front of you is precisely the same?

"A That is the most asinine question that I have ever heard, so help me. If you want me to stay and answer anymore questions, let me tell you something. To ask -- and I consider that an asinine question, because that doesn't mean a goddamn thing."

Your Honor, that's all I have at this time.

THE COURT: All right.

MR. FARRELL: I would offer rather than read -- we have marked exhibits which I will now offer which have been identified during the pretrial.

THE COURT: Very well.

MR. FARRELL: I offer at this time Plaintiff's Exhibit 87 for identification -- Exhibit 87 is already in.

I am offering at this time Plaintiff's Exhibit --

THE COURT: May I just offer a suggestion, couldn't we put on a live witness and come back to these exhibits when there is time ti straighten them out?

MR. FARRELL: I could do so.

THE COURT: I will give you an opportunity to find out which other exhibits were not offered and bring them in later. We can save time.

MR. FARRELL: I call James Walker.

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J A M E S L. W A L K E R , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Walker, would you give us your address, please?

A Home address is 11702 Wendover, Houston, Texas.

Q Mr. Walker, what is your education?

A I am a chemical engineer, a graduate of the University of Texas in 1937.

Q Thereafter what was your employment?

A I first worked for the Humble Oil & Refining Company, division of what is now Exxon Corporation, in the refining division at their Houston area refinery for 20 years, until 1957.

Q What were your duties at Exxon or Humble?

A Over the years I had a number of assignments all related to chemical engineering and particularly with emphasis on the economic aspects of refinery petrochemical manufacturing processes.

I was in the refining technical and research division and did technical and economic studies on various operations that the refinery uses that employ chemical engineering technologies.

Q In 1957 what did you do?

A 1957 I joined Purvin & Gertz, consulting engineers, whose main office is in Dallas.

Q Did they also have an office in Houston?

A I am manager of the Houston office at present. We have a five-man branch there.

Q Can you tell me what the business of Purvin & Gertz is?

A Purvin & Gertz engineering staff are all chemical engineer by training. We do technical and economic studies for refining, petrochemical processing companies related both to engineering design, the design of the refinery and the petrochemical equipment for construction and particularly economic studies that are used in connection with financing building or acquisition of this type of property.

Q Have you worked to any extent in Puerto Rico?

A Yes, in connection with our assignments they are worldwide, both private companies large and small and we have done a great amount of work for various Government agencies throughout the world.

Our firm had a number of assignments for Commonwealth Oil Refining, Carbide Chemical, other companies in Puerto Rico and a number of assignments over the years for various agencies of the Government of Puerto Rico.

Mr. Gertz started working largely on the Puerto Rican jobs and by 1961 or 1962 I had taken over most of those assignments so that almost every job that my firm had in Puerto Rico during the 1960's, I personally was involved heavily in it.

With the Economic Development Administration we consulted with the Government when they had discussions with private companies who sought to build plants in Puerto Rico to take advantage of some of the opportunities there and we would advise the Government on technical and economic aspects of this so they would be in a position to negotiate the best deal for the economy of Puerto Rico.

Q Including the evaluation of these projects?

A Yes, the valuation of the property built, of projects. The Government agencies of Puerto Rico, the Industrial Development Corporation, had an equity position in some of the projects and considered equity positions in others and we advised them with respect to taking these equity positions. Some they rejected and some they went into.

Q Have you testified in legal proceedings before, Mr. Walker?

A Yes, I have been involved in a number of civil suits. I have testified before various Government regulatory agencies, both State and Federal agencies and some in Canada.

MR. FARRELL: Mr. MacCrate, do you want to inquire on voir dire?

MR. UROWSKY: No, we have no questions on voir

dire.

THE COURT: All right.

Q Mr. Walker, did you make a study of the fair market value of the Phillips Puerto Rico Core?

A In connection with preparing for this testimony I did early last year. I went back and made a fairly careful evaluation of what a business might have been worth in 1968, the beginning of 1968, which was the approximate date of the initial start-up of Phillips Puerto Rico Core.

This was done with taking into account initially only information which was available at that time, not having access to the financial records of the company to confirm how profitable it had been.

But then later through your office we had access to some of the summary financial statements of Phillips Puerto Rico Core, Inc., for the first several years of operation through 1972 and so in line with the additional information available there, went back and adjusted my calculations of the January 1968 value of the operation.

Q Was this valuation as a going business?

A Yes. My principal basis was to put a value on the company as a going business, taking into account the estimated future profit, future cash generation of the

company and assuming it owned its manufacturing plant, all of the equipment necessary to conduct this business, but without adjustment for any other liabilities or assets that a corporation conducting this business might have.

Q What was the valuation that you arrived at?

MR. UROWSKY: Your Honor, at this point we would object to this evidence produced by this witness as to the value of the facility constructed in Puerto Rico by Phillips on the ground that there has been --

THE COURT: Before I hear your argument I will excuse the jury so that the argument can take place outside their presence.

But first, members of the jury, please be seated and will counsel approach the bench?

(Discussion at the side bar off the record.)

THE COURT: Members of the jury, please withdraw to the jury room.

(The jury left the courtroom.)

THE COURT: Mr. Walker, will you step out in the hall while we discuss this matter.

(The witness left the courtroom.)

THE COURT: Will the other expert step aside too.

Mr. Urowsky, you can state the basis of your

objection now if you like.

MR. UROWSKY: Your Honor, there has been no evidence introduced in this case to date which establishes any connection between the project actually constructed in Puerto Rico by Phillips Petroleum Company in cooperation with the EDA and any planned project which plaintiffs allege they worked on during the year 1962 and 1963.

As a consequence, any evidence as to the actual value of the facility which Phillips constructed is entirely irrelevant to the value, if any, which the plans worked on by plaintiff or they say they worked On during the years 1962 and 1963. For example, there has been no testimony indicating that the Phillips facility that actually exists is of the same type or quality as the planned facility of Prudential or the Shippee group. I believe this evidence is not only irrelevant but may be quite prejudicial.

THE COURT: I am inclined to think perhaps at the present state of the record there is no such foundation to take his opinion. However, the problem that presents itself is this: That if they had a certain concept or idea or some legally protected theory or scheme and Phillips appropriated it, and used it for the purpose of creating this Phillips Core, then the relevant issue is the

value in this at the time of the appropriation of this, let us call it, concept for ease of discussion. Perhaps it is relevant on the value of that concept at the time it was appropriated to show that they did in fact build a refinery, how much they invested in it and whether or not in the time following is first being made operative, it was profitable.

I think that would be relevant and admissible but I don't think we have enough so far. The man said he made a calculation. Where is his report, can't that be marked for identification?

MR. FARRELL: Certainly.

THE COURT: What assumptions did he make and are the assumptions he made all justified by matters of record either in this trial or matters of public record?

MR. UROWSKY: May I speak to the point your Honor just raised concerning the count of the complaint which alleges misappropriation of a business idea?

I agree with your Honor that if that count is to go to the jury, the damages, if any, which are assessed would be the actual value of the concept which is alleged to have been misappropriated at the time it was misappropriated. I point out several things in this connection regarding the testimony that Mr. Farrell proposes

to offer.

In the first place this witness as I understand it, and there are answers to interrogatories regarding his testimony, will testify to the value of the core facility in 1968. Now, the alleged misappropriation as I understand it took place in 1962 and perhaps early 1963 when the materials, and on which Mr. Farrell has examined a number of witnesses, were delivered to Phillips.

But quite beyond that, and I think this is an even more significant point, there has been no evidence that I am aware of in this trial to date indicating that any of the ideas, and particularly the idea of a quasi-public utility about which there was considerable testimony, was used in any way by Phillips and also, furthermore, no evidence that if it was used it was at all a material contribution to the project.

In those circumstances --

THE COURT: Those arguments don't go to admissibility. Plaintiff would have a right to show that his concept was practical as demonstrated by the fact that they built a plant and the plant operated successfully and I cannot be guided in making rulings on admissibility on evidence by anything whatsoever as to whether they really did prove their contentions in this regard. Those

are jury questions, questions for the jury.

MR. UROWSKY: I do think, however, there is an issue whether anything was misappropriated.

THE COURT: That is a jury question in this case as I regard it. At the very least they plagiarized his booklet and may have done more than that. So I think that this testimony would have to be presented in the logical context. You can't confuse the concept or the idea with the value of the plant. They borrowed money or used money and built a physical plant.

If this witness is just going to come in and appraise it in 1966 or 1968 the complete plant constructed physically beginning in 1965 and put a boxcar number on it, that would not be competent evidence.

However, I think he can show the extent of the capital investment by Phillips and the profitability of the plant after it got finished and some economists will tell you that the difference between the cost of money and management for setting up and operating a plant and profit derived represent the value of the concept, not all of which I suppose came from Prudential as viewed most favorably on the record. This is a fertile field for examination.

He would have to state his opinion if he gives

us it as a substantial part of the direct, what he computed, what he it is based on and I am not going to permit him to appraise this plant and building as a going concern and say those are the damages because obviously Phillips paid a lot of money to somebody to build a plant and, secondly, if the plant had an appreciation in value between the time of its construction and the time completed, which I am sure it dis have except for your equitable theory, that is not relevant here. The equity theory is not before the jury.

You may have an accounting on that score but it is not an element of your damage. They build a plant and when they finished the work, and it is more profitable than its cost of production.

MR. FARRELL: Your Honor, if I understand you, I believe you are saying that we are not entitled to a consideration of the value of the plant that Phillips now has as a damages.

THE COURT: Absolutely not.

MR. FARRELL: I would beg to differ. I think we are allowed if the jury finds that they did in fact take our idea concept and information to the benefit, profit or advantage gained by the defendant.

Now, if in fact Mr. Walker testifies as to the

value of the plant, testifies to the amount of debt or whatever it incurred in building the plant, if it was a profitable plant I think that all goes to admissibility for the jury to consider on the value of the concept.

(Continued on next page.)

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THE COURT: I'm inclined to think it may be admissible.

MR. FARRELL: That's really all that Mr. Walker is going to testify to.

THE COURT: He'll have to make clear what assumptions he made and what he based it on.

MR. UROWSKY: I would like to be clear in my mind as to what testimony is going to be introduced and be admitted through this witness. As I understand it, you're going to permit him to testify as to the construction costs of a plant and as to its anticipated profitability in 1968 or are we going to just limit it to construction?

THE COURT: I'm not sure 1968 is the key time.

MR. UROWSKY: I'm not either, your Honor.

THE COURT: I think we are more likely to go to -- when did it come onstream?

MR. FARELL: 1968, your Honor. That's why he chose that year.

THE COURT: I think that has some relevance on the value of ideas, if any, appropriated in the early 1960s, because it is some evidence that the ideas were practical. I don't want to cast myself in the role of an advocate. I'm just trying to view of issue of admissibility

here, and I think based on this trial record, viewed most favorably to the plaintiff, this is admissible. But I want him to confine himself to facts and to detail fully all assumptions he based his opinion on and not just to say "I'm an expert, and I'm here from Houston and I have a box-car number which, I'm about to give you."

MR. FARRELL: I was going to ask him after.

THE COURT: Not after. Let's lay a foundation.

MR. FARRELL: I will do that, your Honor.

THE COURT: All right. We'll take a brief recess.

MR. FARRELL: Thank you.

(Recess.)

THE COURT: You can resume the stand, Mr. Walker.

(Jury present.)

BY MR. FARRELL:

Q Mr. Walker, can you tell us what you did to arrive at a value of Phillips Puerto Rico Core?

A Yes.

In my experience in negotiations leading to buying or selling of a process plant of this sort or valuation for the purpose of a merger, acquisition, it is my

opinion that sophisticated investors, people that are in this business look largely to the profitability of a company or an operation in determining whatit would be worth to them, that is, what they could afford to pay for it, if they can afford to increase the money to build it or if they own a company or an asset, what would be a reasonable price to sell it for.

Q Is that a standard method of evaluating plants such as Puerto Rico Core?

A Well, it is a widely used technique for establishing a value of a chemical or refining, manufacturing facility or business involving chemical manufacturings or refining, and in establishing a projection of profitability you, of course, have to make reasonable assessments of the future earnings of a plant.

In the case of the Phillips Puerto Rico Core, their principal products were benzine and other aromatic petrochemicals and motor gasoline, so the primary step in trying to forecase profitabliity of this operation is to get some projection of future prices of benzine, future prices of motor gasoline and of course, all the other products.

Q Did you do that, Mr. Walker?

A Yes. I projected both the product values and

the raw stock costs.

The raw stock in the case of this plant was naphtha, which is not a naturally occurring hydrocarbon. It is not something that you produce out of an oil well, but rather, a fraction that normally is obtained from a refinery. It is a so-called intermediate stream. It is not crude oil and it isn't a finished product, but it is the gasoline boiling range part of crude oil.

So in other words,to project the profitability of this, you've got to project simultaneously and on a consistent basis what product prices were going to be and what naphtha costs were going to be.

When this plant started running, benzine was selling for the order of 25 cents a gallon and wholesale regular gasoline for the order of 10 or 11 cents, whereas now those values are at least three times that high, but at the same time, when they started operating this plant, naphtha could be purchased for something in the range of 5 or 6 cents a gallon, and now it is three or four times that much. So it's the margin between, the difference between what you sell your products for and what your raw stock costs you which basically controls the level of profit.

Now, the third big item to be subtracted or to be estimated is the operating cost. You buy some naphtha.

You convert it into much higher value products but you also have expenses, labor, chemicals, fuel, all sorts of manufacturing expenses.

Q Did you estimate those expenses?

A So I estimated the expenses. Now originally, as I said, last year, when I was asked to do this, I did it all on a basis that I would have done it in 1968, not taking into account what I knew about how the price of benzine had developed and how gasoline prices had developed in 1968, but going back to if Phillips or Prudential or anyone, if our client, the Economic Development Administration and the government of Puerto Rico had asked me to make this evaluation in early 1968 , I tried to reconstruct what I would have come up with as answers at that time.

Q Why did you choose 1968, Mr. Walker?

A Well, because the plant actually got onstream or the company started operations in 1967 and the plant began to run in '68, by the first of '69 it was pretty well on the line. January '68 is a reasonable period at which I could say all of the arrangements have been accomplished and the plant has been built and it is now going to try to prove itself and see how good a profit making machine it is.

So if I might continue, in Puerto Rico there were a lot of special conditions that induced Phillips and

Carbide, Commonwealth Oil, Sun, Gulf, all of the other companies, to come down there and make investments which the government wanted them to make in order to stimulate the economy of the island and provide more employment.

Q What were those advantages?

THE COURT: Before we get into those, did they affect the price of benzine in Puerto Rico?

A Yes, some of them affected the value of the products in Puerto Rico and particularly they affected the operating costs of the plant.

THE COURT: Was this benzine that you talked about as having a value of 25 cents per gallon -- how did that figure of 25 cents compare with the then-landed costs of benzine and other aromatics brought from the States?

THE WITNESS: Well, the benzine was not brought from the STates to Puerto Rico, but in my analysis, I concluded that a reasonable value to assign to benzine produced in a plant in Puerto Rico would be one cent per gallon lower than the value of benzine produced in a plant in Texas or Louisiana where much of the competitive benzine in this country is produced.

Actually, much of the benzine produced in Puerto Rico is shipped to Europe rather than to the United States.

The gasoline produced in Puerto Rico, though, is shipped to the U.S. east coast.

Q How did that price --

A I took a one cent a gallon differential there also, namely, first determined what the forecast values of benzine -- and when I say benzine, by comparison, I'm taking into account all of the similar aromatics, cyclohexane, various xylenes, they're all aromatics, and I will class them, if you will permit, just as the benzine type products and the motor gasoline.

You have got a lot more involving manufacturing in the U.S. mainland, both of gasoline and benzine, and a lot more pricing experience, so more reliable forecasts can be made of prices there.

And by taking, developing these prices on the basis of a U.S. Mainland plant, and then subtracting one cent a gallon for all of the products, you get back to an equivalent price in Puerto Rico.

Now, the one cent a gallon is not just an assumption or number out of the air. It is a rather conservative assessment in that, for example, gasoline produced in Texas can be moved by pipeline up into the U.S. east coast area or in some cases brought by ship from Texas, Louisiana, refineries, around to east coast ports, whereas

from Puerto Rico it would of course have to be shipped by ship from Puerto Rico to the east coast, and at some locations it is actually cheaper to ship the product from Puerto Rico to where it's going.

The landed consumption at a coastal area in South Carolina, for example, is probably a break-even. So the one cent a gallon number that I had developed in connection with many other studies done for various projects related to Puerto Rico, and I think it is a rather conservative debit to apply to the Puerto Rico location for all these products.

However, of course, it is not better than the estimate or the forecast of the mainland price.

So, it is the differential between the cost of raw material, plus the operating costs and the value of the products that sets the level of the profitability.

Q Did you consider any other advantages of locating in Puerto Rico, Mr. Walker?

A Yes. Of course there is the income tax exemption which was granted to the plant; and the major item of the allocation of foreign, permission to import foreign naphtha.

Q The quota?

A The quota to import 50,000 barrels a day of

naphtha feedstock which was granted to PHillips for use in Puerto Rico plant. And because at that time foreign crude oil was cheaper than domestic crude oil, naphtha was also cheaper than domestic haphtha, and in my assessment, conservative differential of about two and a quarter cents a gallon that naphtha charged to a plant in Louisiana or Texas would cost two and a quarter cents a gallon more than naphtha bought in foreign refineries or brought to Puerto Rico and charged to the Phillips plant.

Q How much is that a barrel, Mr.Walker?

A Well, there are 42 of these gallons in a barrel, so that is about 90 cents a barrel, a little under a dollar a barrel, and a dollar a barrel credit on 50,000 barrels a day would be tremendous advantage, but this was offset by other disadvantages, such as the additional freight.

Q What were the disadvantages of locating in Puerto Rico, Mr. Walker?

A Well, among the disadvantages is that while you have these two big things, cheaper feedstock and income tax exemption, the Phillips arrangement with the government of Puerto Rico and with the United States Deparmtnet of the Interior, which controlled the oil imports, had a lot of restrictions attached to it.

Phillips was not just to take the cheaper

feedstock and do what they wanted to do with the profits. They had a provision in the agreement that the company was required to invest all of the profits generated by this plant in other plants in Puerto Rico for a period of ten years, which was the period for which the oil import quota was granted.

This was done by the government because they wanted more plants to be built to provide more jobs in Puerto Rico.

While this is not necessarily a big hardship, there were good investment opportunities in Puerto Rico. That might be the very place that the company would like to re-invest profits once they were generated, but it did provide an additional restriction.

You don't have the freedom to do what you want with your money that you would have if your plant were making the same amount of money on the mainland.

So that is a negative factor. And someone evaluating a plant, dividing what they would be willing to invest there or what they would be willing to pay for a business that is established in Puerto Rico, would -- this would cause them to lower their price.

Another thing is while you have, at that time, the labor price in Puerto Rico was substantially less than

it was in the mainland.

You could hire people to work for lower wages, and this would go into your calculations of profitabliity. It would recognize that the whole objective of the Economic Development program was to try to improve the style, the standard of living in Puerto Rico and that wages were bound to go up, so while you might have a labor cost advantage initially, this would be eroded over the years. So that would be a negative factor.

Another negative factor is that while you had a tax exemption, the tax exemption arrangement was that under the agreements between the United States government and the government of Puerto Rico, which gives Puerto Rico a special commonwealth status, individuals or corporations in Puerto Rico are not subject to United States income tax but they are subject to income tax by the Treasury Department of Puerto Rico. So that that gave the government of Puerto Rico an option to waive these taxes if they wanted in other words to induce companies to come down there.

And the tax exemption is a factor in most of these projects. But it wasn't all clear, all free and clear. While you didn't pay any income tax, you still had to have some restrictions on what you can do with the money. The money could not, from Phillips Puerto Rico Core, Inc.,

could not just be transferred back to the parent company in Bartlesville without some United States tax liability.

So that was a factor. As long as it's kept in Puerto Rico or re-invested there or somewhere else outside the United States, there would not be this repatriation of profits tax liability.

So all of those factors were ground into my evaluation of what an oil or chemical company or sophisticated investors would have considered a reasonable value of this going business, once it got started, got to the point it was in 1968.

Q Was there anyting else that you considered, Mr. Walker?

A Well, no other major factors that come to mind.

Q When you had considered those factors, how did you arrive at the evaluation of Phillips Puerto Rico Core?

A Now, having done all this, and sort of come to a level of profitabliity, I established that on the average for the first ten years, while the oil import quota and the tax exemption were in effect, the project would be generating a very substantial amount of cash, in the range of 18 to 20 million dollars per year; that following that period, because the oil import quota arrangement ran out and the tax exemption ran out, then it would fall back to about the

kind of economics you would see on the United States Gulf coast for a similar plant, but you wouldn't be wiping out these disadvantages of the freight differential and so on.

So we made, or I made a fifteen year projection in which the contribution of the last five years was much less important than the contribution of the first ten years.

THE COURT: I don't understand your analysis of the oil import quota.

Are you telling us that this oil import quota was only good for ten years?

THE WITNESS: There was a special contract between the United States Department of the Interior and Phillips Petroleum Corporation which granted them an allocation for a specific period of ten years, yes.

THE COURT: What provision would be made to charge this refinery at the end of the ten-year period?

THE WITNESS: Well, the refinery would then be in the same position as any other plant. They would not have the special quota. They would have to arrange for suppliers in the world market or in the domestic market.

This was the case with all of the plants that went into Puerto Rico. They weren't given an indefinite margin, an indefinite advantage, but they were given this for a limited period of time, and, of course, as the world

situation has developed, foreign crude costs more than domestic crude now so that at this stage that allocation is really worthless.

Well, then, I made a projection, a fifteen-year projection. This is sort of conventional. Sometimes a ten-year projection is used, but fifteen is more conventional, and anything beyond fifteen years becomes, the value of the money that you're not going to get until sixteen or twenty years from now is much less valuable at present.

So I've taken then, the projection of cash flow for this company and have then, if I say $20,000,000 a year for ten years, that means $200,000,000 is coming in, but that certainly doesn't mean that somebody would be willing to pay $200,000,000 in 1968 for the privilege of getting back $200,000,000 over a period of ten years.

Now, the conventional way to look at the present wroth of future earnings it to discount the value of future earnings back to a present worth in terms of some rate or return or investment, and this is done -- maybe the same terminology is not necessarily used, but every oil and chemical company looks at investments in terms of the time value of money.

Now, the term discounted cash flow rate of return is a specific number that some company or some

investor may have a criterion of at what rate of return is he willing to invest money.

Now, in this kind of operation, refining and petrochemicals, generally we find that corporations would look to rate of return of the order of at least twice what the going interest rate is. If you can put money, buy bonds or some interest-bearing investment that is fairly safe, and earn -- back in 1968 the interest rates for corporate borrowing were in the range of 5 to 6 percent. That meant unless you could earn 10 to 12 percent you might be just, you know, in an investment in a petrochemical plant, you might be safer just to put your money in some safer investment that earned a lower rate.

Now, this discounted cash flow rate of return has fairly complicated mathematics involved, but what it really means, if you can get 6 percent interest on your money, your money will double effectively in ten years. You put up a dollar in a savings and loan account that earns a little over six percent a year, and it compounds every year, so that at the end of ten years you've got two dollars. So that if you're going the other way around, you'd look at how much would I be willing to invest today in order to get a dollar of profit ten years down the road? Well, if 6 percent was your criterion you'd be willing to invest

50 cents today in order to get a dollar profit down the road, ten years.

Now, on the U.S. mainland, in 1968, prices of benzine and motor gasoline, wholesale prices, just really weren't sufficient to give a rate of return in the range of ten to twelve percent or twice the going interest rate, but still people were building refinery equipment and still were building benzine producing plants, and I took a conservative look at the pricing structure that I developed for the mainland, the one which I determined or estimated the Puerto Rican profitabliity level from, and the mainland operation would only have afforded say a 6 or 7 percent rate of return.

So those are very conservative prices that I have used in estimating the value of the Phillips plant, but the two key numbers came out, benzine on the mainland, 26 cents a gallon, and motor gasoline, this is an average of about half and half regular and premium gasoline, motor gasoline was 11.6 cents.

So on that basis, then, I used 25 cents for benzine that is a cent less than the mainland, as the Puerto Rican price, and 10.6 cents for the motor gasoline crude, and motor gasoline was important; this plant made 25,000 barrels a day of gasoline along with the petrochemicals out

of 50,000 barrels of feed -- not 25, it was 24,800, because the agreement with the government, with the Interior Department , said it had to be less than 50 percent gasoline, so they went as close to that as was practical.

So having used, developed these numbers then, I came up with a projection of profitability for the core plant and then I plotted up what price, what the value of the plant as a going business and a plant required to conduct its business would be at different rates of return. And while I said that a mainland investor or a company building this kind of plant on the mainland would like to get 10 or 12 per cent rate of return and actually at that time I really only looked to about 7 per cent, I said that in order to invest in Puerto Rico because of the short term of the business part of the oil import credit and all the other factors, that I would anticipate a purchaser or investor would expect to get a return in the range of 15 to 20 per cent per year.

I believe that Phillips, whatever numbers they used or whatever word they use to describe it probably went into the core project expecting a discounted cash flow rate of return in the order of I5 or 20 per cent.

Now, I take the middle point of that, 17-1/2 per cent rate of return as my best estimate, my advice to a client who is either buying or selling, as to what he should value this future cash flow pattern and I would then read the value of the plant off that curve and that would give me the value of the Phillips Puerto Rico Core

and before any consideration of any liability or debits that I had like long-term debt as to other assets --

Q What was the value before consideration of debt?

A The value I arrived at is $97 million.

Q Can you tell me about the debt?

A It was publicly indicated in the journals that this plant originally was going to cost about $60 million of which 15 million would be equity and 45 million borrowed money.

Now, in addition to the $60 million that it may have cost -- a little more than that, we found when I just a few days ago saw the final results, the summary balance sheet for the company for its first several years of operation, that the actual money invested --

MR. UROWSKY: Objection. I object to the introduction of any evidence as to actual returns that occurred on the investment on the ground that we are now moving --

THE COURT: You don't have to state your grounds. If this witness made an assumption as to the actual cost I will permit him to testify as to the assumption he made and he may be cross-examined as to where it came from.

Did you assume the actual cost of this plant? You say it was worth $97 million?

THE WITNESS: In my revised calculation it leads to $97 million. I have used an estimated cost of $70 million.

THE COURT: That includes everything, the oil import quota and everything?

THE WITNESS: That includes all the development expense, the expense of getting the plant built and started up.

THE COURT: That is the entire plant?

THE WITNESS: That is the entire plant and all the arrangements leading to it. That does not provide for all of the oil that is in the tanks.

The inventory is working capital, just the financial investment and that is consistent with what the investment was shortly after the plant got started up. So that immediately you had a value of $97 million for something that cost $70 million, just getting this thing organized and getting all the special credits was worth the difference, the $27 million.

Now, on the mainland your value and cost have to equate because you don't have these other special credits.

If someone is going to use a criteria of investment that allows him to asses the value of a project at $100 million, then he will go into it if he can build it for less than $100 million. But if it is going to cost him $120 million to build it, it is not a good investment and he wouldn't go into it.

This gap between the actual cost and valuation once it is built is a quantitative calculation of what the value of getting this special arrangement in Puerto Rico was.

Q Now, Mr. Walker, did you take into account the debt as you --

A As I started to explain about the debt, there was initially $45 million of debt. Now, I am not clear, we haven't had access to the detailed financials, somewhere an additional $10 million was raised.

If that was in the form of debt, then that would make the debt 55 million instead of 45. If it was in the form of additional equity contribution by the sponsors, which I believe it was probably, then that would not be a debt of the corporation. But I don't know that much about the financing. I didn't have access to those financials.

Q Mr. Walker, did you prepare a report incor-

porating your estimates as you just testified?

A Yes, I did. Now, I believe --

Q Is that Plaintiff's Exhibit 231 for identification?

A Yes. This is a report that I prepared last March on a preliminary basis.

Q Thereafter, after preparing your report last March, did you have access to the financial statements of Phillips Puerto Rico Core?

A Yes. I was shown the summary sheets for the financial statements through the year 1972.

Q I show you Plaintiff's Exhibit 230 for identification and ask you if those are the reports that you saw?

A Yes, these are.

Q After having seen these statements what did you do with respect to the report that you prepared in March, 1975?

A Well, I went back and revised it.

Now, on three principal points, one is that I had had estimated or assumed or determined to the best of my ability, without the specific data in the original reports, that the cost of the plant was $60 million. These financial balance sheets show that early or by the

end of 1968 the plant had a cost of slightly over $70 million and since some of my operating expenses were figured as a percent of investment --

MR. UROWSKY: I object to this witness testifying to evidence not in the record.

THE COURT: I think he already told us that he adjusted the estimates to $70 million and I don't think it is vital as to why. The correctness of such adjustment is not questioned and if it is, the source of it may be brought out on redirect examination.

He made an adjustment in his opinion to reflect what he considered a correct estimate. I will permit him to so testify. He doesn't have to say where he got it at this point.

A I made some other adjustments also and revised the report which gave me -- my original number had been slightly higher than 97. The 97 million is the answer I got when I revised the figure slightly.

Q Is Plaintiff's Exhibit 232 for identification the report as revised by you?

A Yes. This is where I made these minor adjustments and come up with the $97 million as the best guess, best calculation.

Q Mr. Walker, do you have another copy of your

original report?

A In my briefcase. This is my only copy.

Q During the luncheon recess could you do the same thing --

THE COURT: Don't take up the time of the jury with that. I am sure that if the attorneys ask Mr. Walker to do something with the copy he will do it. I am sure he will cooperate with anyone who wants his assistance. Let us go forward with the trial.

MR. FARRELL: Your Honor, I offer at this time Plaintiff's Exhibits 230, 231 and 232 for identification.

THE COURT: Is there objection to any of these papers?

MR. UROWSKY: I can't state whether there is objection or not to any of those papers since I haven't had a chance to examine them with respect to the financial statements of Core.

THE COURT: I will permit you to examine them and take it up later and reserve on the offer.

Any more direct examination?

MR. FARRELL: I have no more direct, that is the conclusion of the direct.

Is there objection on the financials?

MR. UROWSKY: No, sir, no objection on the

financials.

THE COURT: Exhibit 230 is received in evidence.

(Plaintiff's Exhibit 230 for identification was received in evidence.)

THE COURT: You have completed direct examination?

MR. FARRELL: Yes, I have, your Honor.

THE COURT: Members of the jury, do you think you could break for lunch now and return at say five minutes of two?

Please withdraw from the courtroom.

(The jury left the courtroom.)

(The witness left the courtroom.)

THE COURT: How does it appear that the report wasn't furnished earlier?

MR. FARRELL: They requested interrogatories and there were answers to interrogatories.

THE COURT: Is there anything in the report that is not contained in the man's direct testimony?

MR. FARRELL: They are more detailed. They have all of the graphs he plotted and the actual prices of the benzine and gasoline, it has the actual cash discount on a table.

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I will say that this was all supplied in answer to interrogatories that Mr. MacCrate propounded to me about a year ago.

MR. UROWSKY: I would like to state for the record that we received answers to interrogatories concerning expert testimony from the plaintiffs in the early part of April 1975. We have never received any information from them indicating that testimony which would be given on this subject by an expert witness had been revised and he would testify in fact to different conclusions and different calculations than those made in the interrogatories which, as I said, were delivered to us about nine months ago.

THE COURT: Am I correct in understanding that his sole revision is because he believes the historical cost of the plant was greater?

MR. FARRELL: There are two things. First he found from the financials that the historical cost was greater.

Secondly, he found that the profits were less than he projected and thereupon he lowered his estimate as made in 1975.

THE COURT: You see the gist of his testimony is he attributes the balance of $27 million, and I am

reading from my bench notes which may or may not be complete, "Getting it organized and getting all the special credits" and by credits I assume he includes the oil import quota and any other permits or credits or engagements they had.

The fact is complicated by something which he did not bring out which the Court understands to be so, the Puerto Rican Industrial Development Corporation owned 25 per cent of the equity and there is nothing in this witness' testimony which breaks out of that $27 million the value of Phillips' activities which must have been considerable in getting it organized, the activities of Chapman or Coan or for that matter Anderson because as far as this trial record is concerned, there is nothing which vests Anderson's claim in Prudential and Anderson testified and all the other testimony seems to indicate he didn't assign his rights of transfer them. He said he didn't want to engage in litigation with Phillips.

In addition to which he has already been paid and retained through his law firm by Phillips. I have reached the conclusion that the jury could find that he reached the conclusion that they didn't owe him anything.

MR. FARRELL: Your Honor, he did say in his testimony that he was working with the Prudential group and

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Phillips together.

THE COURT: That is right. He didn't want any share of Prudential's side of the transaction.

At some point he either abandoned his interest or waived it or gave it up but he did not transfer it to Prudential Oil Corporation New York or Connecticut so that I don't know how you break out the concept or idea or proprietory information or whatever catch word you want to use to describe it, out of that $27 million which includes that and also includes all these other activities. I just don't see you complete the allocation here.

There has been nothing in the witness' direct and nothing else in the record which would let this jury take that $27 million figure --

MR. FARRELL: We have a second expert who is going to do that.

THE COURT: All right, why didn't you tell me?

MR. FARRELL: I am sorry, I didn't realize where you were heading. He will testify as to the appropriate value of the services.

THE COURT: One other point I might mention.

Ordinarily in a jury trial it would not be admissible over objection on the direct case I mean to admit an appraiser's report. Probably it can be used

to refresh his recollection, probably it can be used to impeach his testimony. Perhaps I could take it something in the nature of a chart or a series of computations. Under those circumstances it might be admissible. But if there is nothing to be adduced on 237 let's not waste time.

MR. FARRELL: It is 231 and 232.

THE COURT: I beg your pardon, 231 and 232.

MR. FARRELL: I'll be glad to let them have these without having Mr. Walker make any copy and they can inspect them over the lunch and take them and tell me.

THE COURT: I think that is reasonable.

MR. FARRELL: We can handle that after lunch.

THE COURT: I don't see any basis for admitting them.

MR. FARRELL: I don't feel strong about it, your Honor.

MR. UROWSKY: Your Honor, I would like to raise one further point briefly which is related, if I may.

We also received answers to interrogatories last April concerning testimony which Mr. Farrell proposes to introduce through his second expert. If I understand those answers correctly, I don't believe they will solve the problem which your Honor just raised concerning breaking

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out the value of the advantages which Phillips may have had in locating this plant in Puerto Rico.

THE COURT: That is really not what we are addressing ourselves to. At some point here I am going to ask the plaintiff to verbalize so we don't keep referring to it in shorthand form, exactly what Prudential conceived, formulated or developed that is legally protected as a concept for a petrochemically oriented refinery. Those are the words in Court Exhibit 1.

I think it would be good to have a statement on the record, to be furnished, which would say exactly what the legally protected concept or material was, who developed it, when they developed it and when and how and under what circumstances they furnished it to Phillips.

There is a minor inconsistency in the testimony as you often have in a case generally involving such a long passage of time as to exactly who had these ideas in the first instance and what they did with them.

I think you ought to summarize for the Court exactly what Prudential conceived, formulated or developed and when and how and what they did with it as far as placing it in the hands of Phillips.

MR. FARRELL: We will have that, your Honor.

THE COURT: Mr. MacCrate will have concisely

what your position in the lawsuit is and the defendant can go forward and meet it if they can. That will be what the jury will have to decide but you see $27 million of which some undivided part is attributable to a legally protected concept or material conceived, formulated or developed by Prudential Connecticut, isn't very helpful to the Court or the jury.

MR. FARRELL: We also have the joint venture claim and that is --

THE COURT: That is a different claim.

MR. FARRELL: The allocation there would be --

MR. UROWSKY: I understood that this evidence was being admitted only to prove damages arising out of the misappropriation claim.

THE COURT: That is my understanding. If he proves the equitable claim, the joint venture is entitled to the undivided 20 or 30 or 10 or whatever percentage it is or 99 per cent, the value, so long as it is over $10,000 to meet the jurisdictional limits of this Court and that will be immaterial. Isn't that so?

jklt 1

MR. FARRELL: Yes, your Honor.

THE COURT: That is an entirely different case here. I can understand why none of you have talked very much about it, but I was taking this testimony as to damages, and unless it can be tied in with statement number 4 of the issues to be tried, then I don't think that it properly belongs before thejury.

MR. FARRELL: Right, your Honor, I understand.

MR. UROWSKY: Your Honor, I would just lke to conclude, for one moment:

My understanding from reading the answers to interrogatories presented with regard to the second expert witness who will testify in this court today is such that I do not believe that whatever value may be attributable to any legally protected idea formulated by Prudential will be adequately discriminated by the testimony of the second expert witness.

Now, I don't know, but I would like to move at this point that the evidence which has been received from Mr. Walker be received only subject to connection, and the establishment of some connection by the second expert witness, as to the value which may be attributable to any legally protected idea formulated by Prudential. If that is not done, I am afraid we are going to be sending to the jury

jklt 2

testimony about advantages abbrogating a value to $22,000,000 without any idea of --

THE COURT: 27,000,000.

MR. UROWSKY: 27,000,000, I beg your pardon, your Honor --$27,000,000 without any specification as to what costs were involved in order to achieve this advantage, what other parties were involved and shared it and so on.

THE COURT: You know, let me say first that I'm not going to make any such ruling, but the problem you raise presents a very interesting, what I would consider almost a basic Horn book question here that I think you both should address yourselves to:

Assuming that you produced sufficient evidence to satisfy this jury that Prudential Connecticut conceived, formulated or developed a legally protected concept or material relating to the petrochemically-oriented refinery in Puerto Rico, that it furnished that concept or material to Phillips, that it did so intending subjectively to be party to a joint venture with Phillips at an undisclosed percentage to be fixed by Mr. Robert Anderson, when, as and if all the parties sat down and agreed -- and I have previously characterized that in my informal discussions with counsel as an agreement to agree -- and let us assume further

jklt 3

that the agreement to agree became ineffective for some reason because Mr. Anderson never set the numbers or the numbers that he set were not acceptable or whatever assumption you wish to make, and assume further that Phillips used this concept or material under circumstances where Phillips had reason to believe that it was not intended to be received gratuitously, is that adequate to permit the jury to award damages?

You see, you have two competing philosophies here. Juries cannot speculate as to damages. There has to be evidence of the damages, and the plaintiff has to prove his damages. He just can't prove that my damages are some undivided portion of $27,000,000 which covers about 20 different concepts, one of which is mine.

Furthermore, you have the contrary view that many times juries can fix the reasonable value of matters just using their own common sense and taking the whole picture as a whole, and I think you'd better look for some recent New York case law on this score, because if you stopped right here, you have proved, looked at most favorably to you Mr. Farrell, you've proved that there was a $27,000,000 item here, some undisclosed portion of which is attributable to Prudential's concept or material.

MR. FARRELL: I don't agree with you, your

JKLT 4

Honor.

THE COURT: You don't have to argue it now, but I'm calling your attention to the problem, and I think we should be given from both sides, some recent New York State case law about this, because juries cannot speculate as to damages ordinarily. You have to prove your damages.

All right, I have kept you on your lunch hour but I will permit you to say why you don't agree, and then I think we will go back and resume this afternoon. What don't you agree with?

MR. FARRELL: Your Honor, I don't agree that the concept has to be valid as a portion of $27,000,000. If in fact Prudential had a concept which enabled Phillips to proceed to obtain a quota, that concept would have a value, in fact, would be of as great value as the entire quota, because without that concept or without those ideas, it would not have gotten the quota, it would not have gotten the support of EDA and therefore would not have had the $27,000,000 about which Mr. Walker spoke.

Therefore, I do not think that it would be necessary on the record to say, well, Mr. Shippee's report had a sentence here which we find over here --

THE COURT: Excuse me, Mr. Farrell. Off the record.

(Discussion off the record.)

(Luncheon recess.)

jklt 1

AFTERNOON SESSION

2:10 p.m.

(In open court - jury present.)

J A M E S L. W A L K E R, resumed.

MR. FARRELL: Your Honor, I have one or two questions.

THE COURT: You want to re-open the direct examination?

MR. FARRELL: I'm sorry. I have two or three questions.

DIRECT EXAMINATION

BY MR. FARRELL CONTINUED:

Q Mr. Walker, how do you calculate the value of a minority interest in Phillips Puerto Rico Core?

A Based on the testimony I gave before lunch, the $97,000,000 value of the business, reduced by $45,000,000 of long term debt, is a net of $52,000,000, which would be the value of a hundred percent interest. I would say it could be sold or should be sold at that price, subject to the debt, so 50 percent interest would be worth half of 52,000,000, or 26,000,000 or 25 percent interest would be worth a fourth of 52,000,000, or 13,000,000.

Q Have there been any actual sales of minority interests in Puerto Rico Core?

MR. UROWSKY: Objection, your Honor.

THE COURT: Is the objection to the use of the word acutal sales?

MR. UROWSKY: Yes, it is, your Honor.

THE COURT: All right. I will sustain the objection, unless there is an offer to show that there was an arms length sale of an undivided interest in the property

Q Was there an arms length sale of an interest, Mr. Walker?

A There was a sale of an interest. I'm not sure how --

THE COURT: Do you understand what is meant by the expression "arms length sale"?

THE WITNESS: I know what I mean when I use the word, yes.

THE COURT: Would you tell us, please?

THE WITNESS; Well, that it would be a free deal negotiated by two parties,neither of which had any compelling, I might say, hold on the others to force the others to trade or to make a trade, where either party could trade if the trade was satisfactory; if it wasn't, he would not trade.

Q Have there been any such sales?

A I considered the sale --

MR. UROWSKY: Objection, your Honor. I think we

ought to fix the time.

THE COURT: I think it is more important that that, Mr. Urowsky. We have to find out if the witness knows. If he knows, he may testify. If he doesn't know, then he may not.

THE WITNESS: I do know of all the transactions that were involved.

THE COURT: Do you know if this was an arms length sale or not? That is the real basic inquiry.

THE WITNESS: It was in my opinion an arms length sale, yes.

THE COURT: And you have a basis for having that opinion, do you?

THE WITNESS: Yes, sir. I participated in the negotiations leading to the sale.

THE COURT: All right.

Q When did that sale take place?

A Money was transferred in the first quarter of 1970. The deal was struck in December of 1969.

Q And how much of an interest was sold?

MR. UROWSKY: Objection. I'm going to object to any testimony in regard to this sale.

THE COURT: I will have to take your basis for your objection at the side bar. Simply that it's too

remote?

MR. UROWSKY: Yes, your HOnor.

THE COURT: I will overrule that objection.

A The Puerto Rican Industrial Development Corporation owned a 25 percent interest in Phillips P.R. Core, Inc., and from the inception of the operations.

Q And was that sold to Phillips?

A That was sold back to Phillips, making Phillips the 100 percent owner in December of 1969, at a price of $18,000,000.

THE COURT: Do you know how much the Puerto Rican Industrial Development Corporation had paid for that 25 percent?

THE WITNESS: I'm not a hundred percent sure of some facets. I know generally.

Initially, a $15,000,000 equity and $45,000,000 debt was subscribed to make up the $60,000,000 estimated initial cost. Of the $15,000,000, PRIDCO -- that is the Puerto Rican Industrial Development Corporation, which is an agency of the government there, put up one for the 3.75 million dollars. Phillips put up three-fourths.

Now, subsequent to that, according to the financial statements which I have just recently seen, an additional some $10,000,000 was infused by further sales of

stock, and I'm not clear as to whether PRIDCO subscribed 25 percent of that or not. It has always been my impression that they did not, but the financial statements would imply that they did.

THE COURT: When you say you participated in the sale of it though --

THE WITNESS: As technical adviser to the Government of Puerto Rico, Puerto Rican Industrial Development I did assist in their negotiations with Phillips for the sale of their interest in 1969, December.

This interest was not exactly parallel to Phillips' interest in the manner that a normal joint venture 25 per cent partner would have been. The principal difference was that PRIDCO did not guarantee any of the 45 million corporate debt. That was guaranteed entirely by Phillips so for that reason PRIDCO's interest was more valuable than the 25 per cent interest of a partner who had an obligation to guarantee the corporate debt.

MR. FARRELL: Thank you, Mr. Walker.

THE COURT: I am not quite certain that I understand. If the company was solvent how would the fact that they had guaranteed the corporate debt affect the value of the equity ownership?

THE WITNESS: Even though the company was making money at a good rate, an obligation to subscribe pro rata part of any loss that might occur in the future is a debit which has some real value.

THE COURT: Is that what you are talking about,

guaranteeing losses or talking about making good on bonds and notes?

THE WITNESS: Making good on notes.

THE COURT: All right.

Anything else, Mr. Farrell?

MR. FARRELL: No, your Honor.

CROSS EXAMINATION

BY MR. UROWSKY:

Q Mr. Walker, I think you testified this morning that the value of the Core enterprise when the anticipated revenues were discounted by costs involved to obtain them was worth approximately $27 million, is that correct?

A No, I didn't testify in that way. You can subtract two numbers that I presented and arrive at a balance of $27 million.

That is, the $97 million value of the going business less the $70 million cost of the actual facility installed does give a difference of 27 million. I did not give any particular importance to that $27 million except to comment that it was there because of the special advantages of this product in Puerto Rich which other projects on the mainland would not have.

Q Did you originally calculate a higher value to that aspect of this enterprise, that is, for the difference

between the anticipated future revenues at their present value and the amount required to produce the facility so that these revenues could be generated?

A Yes. In the original version of my report which was done without access to the more recent financial data, the difference would have been higher. I don't have the report here but it would be instead of 27 million possibly 30 or 40 million.

Q So that we are now in your present testimony after having seen the actual financial reports of Phillips, we are down from either 30 or 40 million to 27 million for the value of the special features which are here in this enterprise?

A The numbers are lower. I have not given that connotation to their significance.

The significant number is that the value of the enterprise is 97 million. My original calculation came out, I believe it was 107 million. That is a difference but, you know, that is in the same order of magnitude.

I am sorry, it was 117, not 107.

Q So that your original figures as to the aggregate present value of the anticipated income from this project, you originally thought it would have produced $117 million, that would be the present value of the future

income and it is now down to 97 million?

A The then present value, the January 1968 number based on the assumption that the cost was going to be $60 million, whereas in fact it was I found $70 million. And other factors which I corrected in reviewing, revising the study that reduced my assessment from 117 to 97.

Q Let us focus on the $27 million figure which was the valuation I think you gave to the particular advantages involved in this project.

Are you aware -- I believe you are -- of the original ownership of the Core project?

A I believe it was 25 per cent PRIDCO, 75 per cent Phillips as the project was consummated.

Q In 1968 Phillips only owned 75 per cent of this project?

A Yes.

Q In looking at the advantages which inhered in this project which we have valued now at $27 million, can you tell us whether there are any costs which ought to be set off against that $27 million?

MR. FARRELL: I object to the form of the question.

A Yes.

THE COURT: Overruled. If the witness doesn't

understand the question he may say so.

A I understand the question. Yes, I can tell you whether there are any advantages which are costs which ought to be offset against it. No, there are not.

I had already taken all those into account in arriving at those numbers.

Q Was one of the things that made up the 27 million value the obtaining of the oil import quota?

A It certainly contributed largely to it, yes.

Q Do you know whether obtaining an oil import quota might involve expenses by a party seeking it?

A Yes.

Q Would those costs be applicable costs of obtaining a quota?

A Cost of obtaining a quota would be cost of obtaining a quota, yes.

Q Those costs, the $27 million figure which was made up in part of the value of the quota was subject, however, to certain costs involved In obtaining the quota?

A No, any cost applicable had already been deducted in arriving at the 97 million. I presume part of the 70 million cost of the plant might have covered development expenses of obtaining the quota and all of those things, not just physically building the plant.

Q Do you know that one way or the other?

A I inow that conventionally development costs are capitalized in the cost of the project. I don't know what Phillips did in this respect.

THE COURT: That is called intangibles ordinarily?

THE WITNESS: Intangible cost, yes.

Q In arriving at the second figure which you presented to us, $52 million as I believe the present value in 1968 of the anticipated returns reduced by the debt necessary to construct the facility, you told us I think that you based the 97 million present value projected earnings in part on the actual financial statement of Core which you saw subsequent to the preparation of your initial report?

A No, I didn't base them on that, I adjusted the calculations to reflect a $70 million investment rather than a $60 million investment and I adjusted my estimated expenses in raw stock costs to compensate so that my projected profit level was approximately equal to the profit level that Phillips actually obtained in 1969,1970 and 1971.

By profit I mean gross profit before depreciation, before income taxes, which of course were given and before long-term debt interest.

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JKLT 1 Walker-cross

Q So you did revise your initial figures after seeing --

A Yes, to make them a little more conservative.

Q Do you know what year Core was incorporated, Mr. Walker?

A I don't know when it was incorporated. I presume 1966, because it was beginning to implement, spend money in '67.

Q Did you make any calculation as part of your overall assessment of this project, for any income earned by Core during the year 1966?

A No. The financial statement I was shown showed that in '66 and '67 a loss of over $5,000,000 was accumulated -- no -- well, it was 5 or 6 million dollars in debt or loss of that much had occurred before it began to make profit in '68, and then by the end of '72 --

Q Excuse me --

MR. FARRELL: Let him finish.

THE COURT: I think he's finished his answer. You mean deficit, is that what you're talking about?

THE WITNESS: Yes, an operating deficit.

THE COURT: In '66 and '67?

THE WITNESS: Yes.

THE COURT: All right. Go on.

THE WITNESS: This is normal; start up is not the profitable time of the business.

THE COURT: That is true of any business.

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And in determining the value that you attributed to the whole business, which I believe was $52,000,000, on the basis of your projections, did you take into account the fact that there was a 5 or 6 million dollar loss in the first two years of operations?

A No. This forward projection technique doesn't-- when you forecast a cash flow of say $20,000,000 a year, $19,000,000 a year, that doesn't mean that in my opinion the cash flow will be exatly that amount each year. This is a forecasting technology. It says -- and it never comes out exactly the same. If you're right in toll, you may expect to make 15,000,000 oneyear, 25,000,000 the next, and 20 the next, so you have averaged $20,000,000 a year.

Now, the same applies to these start up expenses set to the extent that they are not included in the capitalized initial cost, the projection takes into account that you will have to recover any initial losses before you can begin to bank the money that you make later on.

Q Mr. Walker, would you tell us what you forecast as the probable operating income for Core during the year 1968? I believe it's contained in Table 1 of your report, which is Plaintiff's Exhibit 232.

A I believe you have the only copy of the complete report. It may be that this marked up interrogatory has it. This table would indicate operating income -- and you are looking at a number $20,166,000? Is that the table?

Q My question was --

A Yes, that is the operating income derived or taken from a prior table in the report, yes.

Q And can you tell me what the actual operating income for Core was in 1968?

A No. I could, by reference to the financial tables, but this is not what we were doing, sir. We were not reviewing actual operations, but developing what would have been the outlook in 1968, January 1968 Phillips probably thought that this plant was going to make more money at that stage than it actually did.

Q 1968 was the first year of operations, wasn't it?

A It was the first year, yes, of complete operations.

Q Right. And do you know what the actual

performance in thie first year of operations which you estimated to generate an operating income of $20,000,000, do you know what the profit, if any, of Core was in the first year of operations?

A I know where to find it. I don't know what it was. I know it was substantially less than $20,000,000. The corresponding figure was probably about half that.

Q May I show you a copy of the annual report, Phillips Puerto Rico Core for 1968.

THE COURT: That is Exhibit 230?

MR. UROWSKY: Yes.

THE COURT: P-230.

MR. FARRELL: Your HOnor, they are all one exhibit.

THE COURT: I understand.

MR. UROWSKY: Perhaps we should have this marked P-230A?

THE COURT: You can use the original.

A Yes, I can find that here, but I would like --

Q Would you locate that, please, Mr. Walker?

A Is it in line for me to -- I don't know -- are you pointing to the line that says "Net Loss"?

Q I'm just trying to direct your attention to the 1968 column in the financial statements, and I ask you, after looking at those financial statements, in light of

which you have testified you revised your initial estimates of the cash generation of this project, if you can tell me -- the exhibit is in evidence, I believe -- what the net operating income or net loss for the Core project was in 1968, please.

A This figure shows a net loss which is not exactly comparable to this number here, $1,855,000. Now, you asked me for a number from this.

Will you allow me to develop that number from this? It's not here in a comparable form. I would have to --

THE COURT: I think what he has asked you for is the operating results of that particular year.

MR. UROWSKY: That's all I asked for.

THE COURT: If you can tell that from the exhibit, I will permit you to interpret the exhibit, otherwise it may be read into the record.

A Yes, I believe that this would be approximately 7 or 8 million dollars. I would have to analyze this a little closer. But when I said I adjusted my forecast in light of the initial year's operation, I didn't mean that I went back and used these specific numbers, because it would only be appropriate to use actual numbers if you had all the actual numbers for fifteen years, including the next

five or ten years. What we did was forecast and trades are made on the basis of forecasts.

Q And the forecast was for the year 1968?

A The forecast was for fifteen years.

Q But it was based on determining value as of 1968? Was it not?

A It did not forecast a specific profit for the year 1968, no. It forecast the average profitability for the next fifteen years on a year to year basis.

Is that not clear, that prices go up and down, and various things change, so in no one year can you say, I know I'm going to make this many dollars next year. But if product prices get too high, raw material costs will catch up and bring them back down; on the average, over a forecast period, my technology, technique of evaluating this kind of an operation is to make a projection which obviously I'm not going to try to forecast which year is going to be good and which is bad -- we take the simplifying assumption that on the average they all come out at a certain level, and they will, historically this thing has worked.

Q So that your figure --

A For '68 --

THE COURT: Let counsel frame the next question.

THE WITNESS: Sorry.

Q So that your estimate for the average operating income of this facility, let's take it over the first ten years it was anticipated to run, from 1968 to 1977, your average operating income was, I believe, $20,000,000, $20,166,000, is that correct?

A That is my assessment of what I wouldhave estimated in 1968, not having advantage of anything looking in the future.

Q Right. But in fact in 1968 the earnings, just looking at that one year, and we will proceed to the other years, the Core in fact lost well in excess of a million and a half dollars in that year?

A A million and a half is not comparable to the $20,000,000. It is not the same number in the same column. A comparable number is the loss plus the interest-- see, this is before interest on long term debt. It is the loss plus part of the interest, not the interest on working capital, plus the depreciation -- this is a cash flow.

Depreciation is not a cash item.

Q LEt's make the figures comparable.

A I said $8,000,000.

Q About $8,000,000, and your projection for the average earnings for 1968 in all the years from '68 to '77

was 20 million point 16?

A Yes.

Q And so you calculate on the basis of these financial statements that it would have been approximately 8,000,000?

A Yes.

Q Mr. Walker, as I understand your testimony, you attempted to calculate a value for the Core facility to a prudent and informed investor in 1968 by determining what the anticipated profits of the facility would be over a period of fifteen years, is that correct?

A I would use the term cash flow rather than profits. With that change, yes.

Q And as part of the calcuation after determining what the cash flow, the aggregate cash flow would be, you reduced that by the anticipated costs necessary to produce the cash flow, and then discounted the resulting income stream to present value, is that correct?

A Yes.

Q And in making your calculations, did you use certain preliminary Phillips studies projecting the project output of the facility?

A No.

Q Did you use any studies prepared by Phillips

in making your calculations?

A I used only information which had been published in the trade literature, the oil and gas journal and articles of this sort which may have been originally prepared by Phillips but which were not presented as Phillips' articles.

Q Do you have any way of knowing whether those studies which you relied on were in fact the final studies or the final plans used in designing the Core facility?

A I know that the results are generally explainable in terms of what I, myself, know about yields, chemical manufacturing processes and operations.

Q But you did not have beofre you --

A I did not have the specific material balance prepared in designing the plant. Neither did I have the specific yield structure that actually resulted which would itself be different from the calculated design basis.

Q Mr. Walker, do you know whether the facility which was constructed in Puerto Rico by Phillips during the years 1966 and 1967 was similar or substantially similar to an alleged project which was designed by, alleged to be designed by the plaintiff in this case, Prudential Oil Corporation, during 1962 and 1963?

MR. FARRELL: I object, your Honor. That is outside the scope of this witness' direct.

THE COURT: Well, I suppose it probably is. Also, it is not attached to any particular exhibit in this case. If he has had any familiarity with any of the exhibits in this case and has relied on them in any way in formulating his opinions, he may be cross examined as to it. But I think that question, at least as to form, is somewhat vague. I will sustain the objection as to form, rather than as to the scope of the inquiry.

Q Mr. Walker, have you, in fact, seen any brochures or plans relating to an alleged planned petrochemical refinery in Puerto Rico, which is alleged to be planned and designed during the years 1962 and 1963 by Prudential Oil Corporation or Nathan Shippee or Thomas Young or any individuals associated with Prudential at the time?

A Yes, in giving me background material for this project, Gold, Farrell & Marks showed me some of this material some months ago. I didn't use it in any way nor did I use any Phillips' submissions in any way in developing this estimate of the probable value of the plant as of 1968.

Q But you did see those materials?

A I have seen them, yes. I have not studied them, because we decided that my area of expertise would not be involved in comparing the similarity of the project with

the Phillips plant as built or other things in that area so I didn't make a particular study of it.

Q But do you know whether the plans or brochures which you saw, do you know whether the project which purported to be outlined in those plans was similar or substantially similar to the actual project constructed by Phillips?

MR. FARRELL: Objection, your Honor.

THE COURT: I will permit him to answer.

A Yes. In my opinion it was substantially similar.

Q And didthose preliminary studies indicate what the charge on the plant would be?

A I believe that I saw in the original stages started with crude rather than naphtha but --

Q Was it naphtha that was actually used?

A Naphtha is used at Phillips P.R. Core, Inc., but this is not a basic difference.

Q Thank you.

I'd like to return for a few minutes to the calculation you made, Mr. Walker. When you determined the present value of the cash flow that you were anticipating to come, you did that, I believe, and correct me if I'm wrong, because investors are generally interested in how

much money they will get out of their investment, is that correct?

A Yes, and the time at which they will get it.

Q And are investors generally concerned about the factor of time, sir?

A Yes. Present value of money is of primary importance.

Q Would inventors generally prefer to get the money back sooner rather than later out of an investment?

A Yes, sir.

Q Would you explain to us why that is, please?

A Well, it is sometimes difficult to explain in that it seems like an action that is obvious. If you have money tied up in a project you cannot be investing that money in some other project where it would earn additional revenues for you.

Q Is it also true that when money is tied up in a project over a long period of time there is danger that the investment will go sour and the investment will never be returned?

A There is always that danger.

Q Is that something which is generally of concern to investors?

A That is of primary concern to any investor. If the investment is safe and he has back-to-back contracts with some responsible company where nothing could possibly go wrong short of another depression or something like that,

he is willing to take a reasonably low rate of return.

If it is a very risky business he wants a high rate of return because he is taking a very big risk.

Q Is he generally concerned as well with how soon he will be able to get his money out and free from risk?

A Yes.

Q Are you aware, Mr. Walker, of your understanding of the agreements negotiated between Phillips and the Government of Puerto Rico that all profits of the facility were required to be reinvested in satellite plants for a period of 10 years?

A Yes. I testified that I took that into account in choosing --

THE COURT: I'm sorry, but I think you said invested in Puerto Rico this morning and counsel is now asking you about the concept of being invested in satellite plants.

THE WITNESS: Yes, I believe that may be different. No, my recollection is that the money had to be reinvested in Puerto Rico.

Now, if it had to be in a satellite to this plant, I don't know, I would normally assume investment would be made in a satellite plant rather than in some

other plant. But I don't recall the detail of the agreement.

Q That would mean that no profit could be taken out of the investment for a period of 10 years, is that correct?

A Yes, and no profit could be paid out in the form of dividends, for example.

Q So that there would be no money available for distribution from this project for 10 years, is that right?

A Yes.

Q What was the life of the import quota upon which this project was premised, which I believe you testified earlier today was an important factor?

A Yes, all of these factors were keyed around the 10 years, that import quota, the reinvestment commitment, 10 years was to be the primary term in which this project was most profitable.

Beyond that then it would be more on an arm's-length competitive basis, would not have these additional factors.

Now, the oil import quota, there was no mechanism that said it wouldn't be renewed but I think it was generally assumed that it probably would not be renewed,

not in the same form.

Q Generally assumed it would not be?

A In anything like the same form.

Q And just at the time when it would be possible, if it would be possible to remove profits from this operation, it would lose the advantage of the oil import quota, is that correct?

A Yes, the times would coincide.

Q I would like to ask you another question, Mr. Walker.

In your projection of cash flow for this project you told us a little while ago that you projected what the average cash flow of the project would be during the 15 years anticipated life of the project?

A I made one projection for the first 10 years and dropped the number for the second.

Q I believe You projected during the first 10 years the project would average approximately $20 million a year in profit?

A Yes, cash flow.

Q In cash flow. So you indicate in your discounting calculation, you presume I believe that there will be realized profits of $20 million, slightly over $20 million a year, is that correct?

A Yes.

Q Isn't it a fact, Mr. Walker, there would be no profit available for distribution for the first 10 years of the project?

A Profits would not be available for distribution.

Q For distribution.

A I did not assume they would be distributed. They would be available for investment to the benefit of the equity owners.

Q What would they be available for investment in?

A Projects in Puerto Rico which I presume would be similarly profitable.

THE COURT: I didn't get that answer.

A They would be available for investments in projects in Puerto Rico and presumably there would be adequate investment opportunities in Puerto Rico so that a company or individual owning an equity which generated these profits wouldn't just have to hold them in the bank at interest. They would be able to reinvest them in other profitable projects.

THE COURT: I understand that you represented PRIDCO at one time?

THE WITNESS: I worked for EDA of the Government which was the parent over PRIDCO.

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THE COURT: Can you tell us, we have heard it both ways this afternoon, the profits or cash flow could be reinvested in satellite plants only or reinvested in Puerto Rico generally? Which is your understanding?

THE WITNESS: My understanding was generally. I believe he cited language that it was in satellite plants.

THE COURT: He asked you a question whether it was in satellite plants.

THE WITNESS: Yes.

THE COURT: What is your testimony?

MR. FARRELL: The agreement is in evidence and I would be glad to --

THE COURT: But this witness has been cross-examined on this subject and it is not clear whether it is his understanding.

THE WITNESS: I haven't read that agreement since about 1969 so --

THE COURT: Are you testifying with the understanding that the money had to be reinvested in satellite plants tributary to this particular plant or are you testifying that it may be invested in anything in Puerto Rico?

THE WITNESS: Well, I am saying that I don't

know. In my opinion it doesn't make any difference?

THE COURT: It doesn't make any difference?

THE WITNESS: Not to me.

Q It doesn't make any difference, Mr. Walker, whether the money can be reinvested in anything in Puerto Rico or whether it has to be invested in satellite plants for this facility?

A Petrochemical tax exempt facilities. You wouldn't reinvest in a clothing store.

Q You understand the investment of all profits was restricted to satellite plants of the Core facility or of satellite plants in petrochemicals?

A I accept that as a statement. I believe I was under the impression they could have invested the money in joint venture chemical operations with a Japanese company, buying raw materials from Commonwealth Oil if they wanted to. If that is not correct -- I don't think it changed.

Q I think we are going a little afield.

THE COURT: You don't expect Phillips to create a customer for Commonwealth Oil?

THE WITNESS: No.

THE COURT: Let us be realistic. Frame another question, Mr. Urowsky.

THE WITNESS: If I could --

THE COURT: Don't volunteer, let counsel examine and then Mr. Farrell may have a chance later.

Q So I understand your testimony here this afternoon, Phillips was really commiting itself to make two investments in Puerto Rico, is that correct? One is they weren't simply investing in a Core refinery but making an investment downstream in a petrochemical plant?

MR. FARRELL: Objection.

THE COURT: It is legitimate cross-examination.

MR. FARRELL: He asked two questions and make a statement.

THE COURT: If the witness doesn't understand he can say so.

THE WITNESS: No, I think I would like to ask you --

THE COURT: Hand up that agreement, please, Mr. Farrell.

THE WITNESS: I will accept it if it says a satellite plant, if I'm told it says that.

THE COURT: There is a big difference.

THE WITNESS: No, sir.

THE COURT: If the Core plant failed the satellite investment wouldn't be of any value?

THE WITNESS: They would, yes. This Core plant if it failed, to provide benzine or not, there are a lot of other companies can provide benzine and the satellite plant just needed benzine from the feedstock. If you restate the question I can answer it affirmatively but in the crossfire I have forgotten how it was phrased.

THE COURT: Frame another question.

Q Mr. Walker, on the basis of your understanding of the agreement which existed between Phillips and the Government of Puerto Rico in 1965 Phillips was in effect committed to make two investments in Puerto Rico, not one, is that correct?

A Yes.

Q One of those investments was the Core refinery, Core petrochemical facility; and the other investments were investments in downstream petrochemical plants, is that right?

A Yes.

Q Can you give me some idea as to when Phillips could have anticipated or when a reasonable investor in 1968 could have anticipated that any money would be coming out of either or both of those investments, money that could be distributed to owners of the company?

A Obviously not for a period of ten years.

Q No money could have come out for ten years?

A Right.

Q Mr. Walker, are you familiar with a method of financial analysis known as the time to pay out method?

A I don't think that I could say I understand what someone else would mean by the use of that phrase, no.

Q Have you ever heard that phrase?

A I have heard that phrase, yes.

Q What do you understand it to mean?

A I don't use the phrase so I would have to create a concept for you.

Q Well, I think we have had enough of creative concepts up to now.

MR. FARRELL: I object to that.

THE COURT: I will sustain the objection.

Don't make any such comments as that.

The jury will disregard it.

Q Is there an analytical approach to investment commonly used by investment analysts called the time to pay out method?

A I believe there is such a term. I wouldn't say commonly, which is used by some people.

Q It is used by certain investors in the real

world?

A I presume so, yes.

Q Do you understand what that method of analysis is, whether you used it yourself or not?

A I don't use it. I don;t know specifically what someone means when they use it.

Q Do you know whether it is generally based on investor's concerns about when they would be able to take their money out of an investment?

A Yes, I would assume that is based -- yes, it is based on that, on concerns about when they would be able to take their money out.

Q When generally used involving calculations of value of a project in terms of the amount of money which can be taken out of it within a certain allowable period?

A I'm not sure I can answer that yes or no. What you are suggesting I believe is that since the profits from this Core operation were locked into Puerto Rico for ten years, they were not available to the equity owners for this period and, therefore, they would have only the present worth that would be associated with ten years in the future time, at which you could acquire the money. That is certainly not correct here.

The money would be reinvested to the equity

owner's account and would grow in Puerto Rico just as if it had been taken out to Bartlesville and let grow there.

Q Are you aware of any actual satellite investments made by Phillips in Puerto Rico?

A Yes.

Q Would one of the investments it made be in a plant called Fibers International Corporation?

A Yes.

Q Are you aware whether Fibers International Corporation ever made a profit or not?

A Not definitely aware. I predicted for PRIDCO's account initially that it would not and I heard that it bore that out, yes.

Q It has not made a profit?

A I presume it has not.

Q Do you know whether or not it has sustained a loss?

A I presume it has. I understand that Phillips expected it to from the very beginning.

Q Mr. Walker, do you know whether or not -- whatever you heard about Phillips expected or not -- do you know --

A I have not seen any financial statements or

reports.

Q Do you know whether the plant is still operating in Puerto Rico?

A I haven't seen it. I read in the journals that it had been shut down. I have no reason to question that.

Q Do you know what the size of the investment in that plant was which is now closed down?

A No, I don't know.

Q Could you estimate it for us based on your expertise and experience in the petrochemical field?

A I vaguely have a recollection of some very substantial number but I haven't reviewed that in at least seven years. I don't know whether it is 50 million or 100 million.

Q I would like to turn for a moment to some of the costs associated with the Core project.

As I understand it, one of the major advantages of the Core plant was the import quota, is that correct?

A Yes.

Q Would a reasonable investor in Puerto Rico in this kind of undertaking in the year 1968 have considered that an important factor in assessing the value of the project?

A Yes.

Q Was it foreseeable in 1968 by a prudent and informed investor that the oil import quota might become worthless at the end of its ten-year life?

A It was certainly foreseeable. It was not anticipated generally, not expected. The probabilities of such a developement would be taken into account by the investor, as I did in my analysis leading to the 97 million estimate.

Q What would cause the quota to become valueless before the end of ten years?

A The raising of the foreign oil prices above domestic oil prices would cause the quota to become valueless.

Q Was a rise in foreign oil prices to the level of domestic oil prices foreseeable in 1968?

A It was not anticipated as a likely development at that time, no.

Q Mr. Walker, are you familiar with an organization called OPEC?

A Yes.

Q What is OPEC?

A Organization of petroleum exporting countries, a cartel of Arabs and non-Arabs, oil producing nations

that ban together to get the best possible price for their product, for their oil.

Q Can you tell us what year OPEC was formed in?

A No, I can't. I believe it was probably the early 1970's.

Q Would be surprised if I told you it was formed in 1961?

A No.

Q Is Venezuela a member of OPEC?

A Yes.

Q Was it generally known in the oil business in the late 1960's that the allowable producing days permitted for pumping oil in the State of Texas was approaching 100 per cent?

A The allowable producing days was approaching 100 per cent?

Q Of the maximum economic rate allowed by the Texas Railroad Commission?

A No. I don't think it was generally realized that it was approaching 100 per cent. I am not sure that in fact it was approaching 100 per cent.

Q I am sorry?

A I don't know that the statement is true whether it was realized by the oil industry or not.

Q Mr. Walker, I think you testified at the close of your direct examination that the -- and at the beginning of your cross-examination -- that the Government of Puerto Rico through PRIDCO owned a 25 per cent interest in this facility when it was first built, is that correct?

A Yes.

Q And you have I think also testified --

THE COURT: Don't summarize the testimony because I am sure that the jury remembers it.

Frame another question.

Q Is a minority interest in a privately owned corporation generally viewed as a desirable investment by investors?

A Everything else being equal, it is less desirable than a completely free interest.

Q Why is that?

A Well, because a majority owner is going to be in control of the company and is going to have a tendency to operate the company for its own general worldwide benefit rather than for, entirely for the benefit of the particular corporation.

This doesn't have to be dishonest. If there are two choices they are going to pick the one that is in their case beneficial.

Q Is there also a problem in the liquidity of the investment where it is a minority investment?

A In the case of PRIDCO's interest in the Core there is a further complication that Phillips had the right of first refusal I believe on Core's interest.

If PRIDCO decided to sell they could not behind Phillips' back go out and sell to a third party. They had to first offer Phillips a right to meet the best offer.

Q So that a minority -- does a minority interest because of these problems generally sell or trade at a discount from its purely mathematical fraction of the net worth of the total corporation, total enterprise?

A Yes. The discount factor, the rate investor's discount the cash flow rate of return has to be higher than it would otherwise be to offset these factors.

Q How much higher?

A Well, I can't make a generalization. In this case I derived a figure of, as I said earlier in testimony, I used 17-1/2 per cent return is what would be required in this instance first and perhaps 12 per cent as being a normal -- everything else being equal --

Q Did the 17-1/2 per cent discount factor relate specifically to a minority rate or was that the value that

you used in any interest?

A That is correct. You are right, the 17-1/2 per cent does not have another discount.

Q What kind of discount factors are often assigned to minority interest in privately held corporations?

A Generally what you call as a liquidity and the factor you mentioned. I would judge that perhaps a matter of difference between 2 or 3 per cent, the difference between 17 per cent and 20 per cent or 15 and 17 might be assignable to those specific factors. There is no accepted formula.

Q Can it run much higher than that?

A I presume under certain conditions there could be a minority interest in a corporation where the majority interest was of such a nature that you couldn't give it away, the minority interest.

Q You couldn't give it away? Would that be affected by the fact that no profits could be taken out of the corporation for ten years?

A That would not apply particularly to the minority interest factor any more than to the whole corporation.

Q Wouldn't it?

A No.

Q Could the minority determine where the profits were being reinvested?

A The fact that the money could not be taken out has no connection with whether you are considering a minority or majority interest of the total.

Q But the minority interest could not determine what the profits were being reinvested in, could it?

A No.

Q They would have no control?

A The majority controls the corporation.

Q They could neither receive the money, is that correct nor could they direct where it was invested, is that right?

A Minority stockholders have the right to expect that the directors of a corporation are going to act in a prudent manner and to protect the interest of the stockholders. But a minority doesn't have the final say on what is done.

MR. UROWSKY: I have no further questions.

THE COURT: Any redirect examination?

MR. FARRELL: Yes, there is, your Honor.

May I see the financial statements?

REDIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Walker, on cross-examination Mr. Urowsky asked you to find in the annual report for 1968 the comparable figure to your cash flow projectioin and I believe you -- your dash flow projection for the year 1968 is found --

A $20,166,000 was the average normal yearly cash flow for the first ten years.

Q What was the figure that you gave Mr. Urowsky from the actual statements as comparing to this $20 million?

THE COURT: Never mind what he gave Mr. Urowsky. If he wants to correct his statement he may do so. The jury heard that once and if he made a mistake call it to his attention.

A I said probably in the order of 5 or 6 million I believe.

I have here in some notation I made previously, the exact number of 4,689,000.

Q Can you give me the same figure from the 1969 annual report?

A 17,356,000.

Q Can you give me the figure for the 1970 annual

report?

A 20 million and 25,000.

Q And how about the 1971 annual report?

A 19,593,000.

Q And how about the 1972 annual report?

A 18,595,000.

Those are numbers comparable to my 20,166,000. I don't have the 1973 and 1974.

This is not in evidence, these are some numbers that I had.

THE COURT: Any numbers you are referring to will be marked for identification, any paper the witness has been looking at.

Hand it to the Clerk and let's have it marked and Mr. Urowsky can look at it.

THE WITNESS: That paper shows how those --

THE COURT: Don't volunteer information, please.

(Plaintiff's Exhibit 233 was marked for identification.)

Q Will you explain what these figures are?

A I took from the summary of the financial statement the net earnings which in 1968 was a loss of 1,855,000. I added to that the depreciation which is a book entry, the cash charged against depreciation is

cash available in cash flow.

I added to it interest charges which is also an item placed on the summary reports because in my development I was looking at the full interest, assuming no long-term debt on the facility. So if I had not borrowed $45 million, I wouldn't have paid three and a half million dollars interest and I added depreciation, interest and net earnings as the gross projected cash flow which corresponds to my projected 20,166,000.

Q Did you do the same thing for 1969?

A Yes. There was one done for each of the years.

Q What was the net profit for 1969?

A We just went through that, these are the numbers, the 17 million, the 20 million, the 19 million, the 18-1/2 million.

Q That is the gross cash flow. I am talking about the net earnings appearing on the statements?

A The net earnings for 1969 I have listed them here from the statement, net earnings for 1969, 9,810,000.

Q You add to that what amount?

A Depreciation of 4,256,000 and interest charges of 3,290,000.

Q What about 1970, what was the net earnings for 1970?

A 12,841,000.

Q What did you add to this?

A Depreciation of 4,327,000 and interest charges of 2,857,000 for a total of 20,025,000.

Q And what were the figures for 1971?

A Net earnings of 12,407.000.

Depreciation of 4,417,000; interest of 2,769,000; total of 19,593,000.

Q What about 1972?

A Net earnings of 11,227,000.

Depreciation of 4,610,000, interest of 2,759,000; gross cash flow of 18,593,000.

We did not have available further years.

(Continued on next page.)

jklt 1 Walker-redirect

Q Now, Mr. Walker, Mr. Urowsky asked if you were familiar with the brochure prepared by Prudential, and I show you Exhibit 215, and the flow sheet in that --

A Prudential?

Q Yes. Now, I show you the flow sheet from Joint Exhibit 50 which is Phillips', a flow chart from Phillips' brochure, and would you compare those two flow charts, please?

A Well, I don't think you want me to compare them plant by plant, but they are essentially the same or equivalent operations with the primary exception that the feedstock on the Prudential plan is crude from which naptha is distilled and the naphtha then runs through the project, whereas in the Phillips flow sheet, naphtha, called here selected hydrocarbon fraction, which was naphtha, was obtained from a refinery which had crude distillation units.

Somewhere else. Starting from crude back in the ground, you went through the same steps to get to the same products.

Q Now, Mr. Walker, Mr. Urowsky asked you about the investment by Phillips in a nylon plant in Puerto Rico by Phillips. Do yourecall that?

A Yes.

Q You stated on your cross examination--

jklt 2 Walker-redirect

THE COURT: Wait just a minute. I'm not going to have testimony summarized like this. We don't have the time for it. Ask him a question about the nylon plant.

Q Can you explain your answer in which you said it was not expected to make money?

A Yes. Part of the deal that Phillips had with the government in Puerto Rico was that PRIDCO would have the opportunity to invest jointly with Phillips in any of these subsequent satellite plants, to the extent of 25 percent. It was not an obligation, but an opportunity. Therefore, when Phillips chose to build a nylon plant, PRIDCO was given the opportunity to go in for 25 percent.

PRIDCO asked me as their consultant should they do this? Very substantial capital investment was involved. I went to Phillips and was shown all of their plans and their costs and their estimates and it was obvious that Phillips planned to use this plant, which was an uneconomically small fiber plant, as a stepping stone to get Phillips Petroleum Company to the fiber business, or further into the fiber business on a big scale and there was no prospect of it being profitable in the initial low capacity stages, therefore recommended to PRIDCO that they not participate in it and they did not.

I would not otherwise have had that much contact

or that much information about that particular project.

The fiber business is not necessarily uneconomical, but to go in with a new company, learning the way, feeling their way on a small scale, it couldn't be profitable even in Puerto Rico.

Q Is the quota system still in effect, Mr. Walker?

A For all practical purposes, no. There are some special hang-over allocations. It was replaced with an oil import license feed system in May of 1973. The Puerto Rico projects were -- an effort was made to continue their operation for the life of their contract period, and they worked in Phillips Puerto Rico Core and continued to get the naphtha but the economic benefit was thereby eroded quite a bit.

THE COURT: Do I understand that they were permitted to continue to obtain their naphtha without paying any import quota fees?

THE WITNESS: I believe that some special reduction or elimination of the import license fee was granted in recognition that they were lossing an otherwise benefit. This was not just Phillips, but all the Puerto Rican plants that had quota arrangements.

Q Mr. Walker, do you know the approximate amount of the Coreplant output that is sold to affiliates of Phillips?

A No, I don't. The gasoline which amounts to fifty percent yield on the feedstock is or was initially, I presume, all sold to affiliates of Phillips and probably the chemical, some substantial part, but not necessarily all.

MR. UROWSKY: I'm not certain whether the witness is testifying to something he knows or whether he's speculating.

THE COURT: I'm not either. I'm not sure whatperiod of time he's testifying with respect to, but you may have recross examination.

Q Turning your attention, Mr. Walker ,to the period 1968, do you know the amount of raw materials for the core plant that Phillips purchased from -- that Core purchased from affiliates of Phillips?

A No, I don't.

MR. FARRELL: That's all I have, your Honor.

THE COURT: Anything else, Mr. Urowsky?

MR. UROWSKY: I have just a few questions, your Honor.

RECROSS EXAMINATION

BY MR. UROWSKY:

Q Mr. Walker, in making your calculation, did you consider the fact that a minority owner would guarantee part

of the debt of this facility?

A The calculation leading to the results of the $97,000,000 valuation or pr- -ata part of that from minority owners is based on the assumption that the equity would be the same type of equity as Phillips. They would guarantee the pro rata part of the debt.

Now, I made -- and in the exhibits there are separate calculations which assign a higher value to a minority interest which wouldhave freedom from guaranteeing the corporate debt. Not much higher, but some higher; some recognition that that is a negative factor.

Q Were you aware when you made your calculation that in addition to the requirement that Core re-invest for a period of ten years all of its profits that Phillips had to assume the obligation of investing a sum of $55,000,000 in the event that the profits did not reach $55,000,000 over the ten year period?

A Yes, that was one of it.

Q And in calculating what a minority interest was, did you calculate that the minority holder might be responsible for making that further investment beyond what the profits were?

A Well, I took into account -- I didn't make a specific discount on account -- because of that particular

item. I knew of that provision.

Q You did not?

A I knew of that provision and did recognize it in establishing the 17 and a half percent rate of return as being applicable to this facility.

Q Mr. Walker, to your knowledge, were there ever any satellite plants built in the Core facility aside from the fibers plant built by Philips?

A I don't believe so, no. Not to my knowledge.

THE COURT: Where did the output of this refinery go?

THE WITNESS: Well, the petrochemical -- the benzine and the aromatics went to markets in the United States mainland and in Europe. They were available on a priority basis for anyone who had come to Puerto Rico and built a plant to use them.

THE COURT: I gather from the answer to your last question, this fibers plant was the only one that actually did?

THE WITNESS: The fibers plant itself was not actually a satellite in the true sense of the word. It did not use feedstock which came from Phillips Puerto Rico Core, Inc.

THE COURT: Where did it get its feedstock?

A From Alabama.

Q Mr. Walker, I have just one last question for you.

If the climate for reinvestment in these satellite plants to which Phillips was committed was so good, can you explain to us why no true satellites were ever built?

A Well, Phillips put all its money, all the money they were required to, and probably all they wanted to put in Puerto Rico into fiber industries.

Q Which was not a true satellite.

A Well, it is not a true satellite. Potentially it could have become a true satellite and I believe that it was formally blessed as a satellite, although it technically was not.

The cyclohexane from the Core plant is the raw material for nylon salt, which is the feedstock for the fiber plant, but nylon salt is not and has never been made in Puerto Rico; cyclohexane was shipped to Alabama or Texas, where there are nylon salt plants or they bought cyclohexane somewhere else, made nylon salt and sent it to Puerto Rico.

Eventually they hope to build a nylon salt plant there but it never came about.

jklt 8 Walker-recross

Q I'm sorry, I'm not sure whether you answered my last question. My question was, if the climate for re-investment of earnings in Puerto Rico was as promising as you said it was, can you explain to me why no one, other than Phillips, built such a plant?

A Yes, I did explain.

Q And even Phillips you said did not build a true satellite?

A I did explain that Phillips had a commitment to invest the profits of Core or $55,000,000, whichever was greater, and they invested much more than that in the fiber plant, and therefore there was no -- there was neither any money or incentive or need for them to invest more.

Q What about other people?

A Other people did build.

Q Why did no one else build a satellite plant?

A Other plants were built in Puerto Rico which used products similar to those built, produced by the Phillips Core plant. They were not satellites of the Core.

Q They were not built as satellites of the Core?

A They were not built as satellites of the Core. The Puerto Rico Chemical is the kind of plant you're talking about; various other satellite plants that Commonwealth Oil built, are the type of plants that would class as

satellite plants if they happen to get their feedstock from Phillips rather than Commonwealth Oil.

Q But they don't get their feedstock from Phillips?

A No. My understanding, the bulk of the Core products are still shipped off the island.

MR. UROWSKY: Tnank you very much.

MR. FARRELL: NOthing further, your Honor.

THE COURT: Thank you, Mr. Walker. You are excused.

(Witness excused.)

MR. FARRELL: Mr. Rosenthal.

L A W R E N C E M. R O S E N T H A L, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q Mr. Rosenthal, can you tell me what your education is?

A I'm a graduate of the Wharton School of Finance and Commerce and then attended the Harvard Business School.

Q What degree do you have?

A B.S. in economics.

Q After you went to Harvard Business SChool, what did you do?

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A I was then employed by the investment banking firm of Lehman Brothers in June of 1957 until January of 1961.

Q And what were your duties at Lehman Brothers?

A I was a member of the industrial department.

Q What did you do there?

A I worked on the servicing of Lehman Brothers' many corporate clients vis-a-vis their investment banking or financial needs.

Q What were your duties in that connection?

A I would work on analyses of proposed ventures, financing for ventures, a broad category of investment bank[illegible] activities.

Did that include the analysis of values of the ventures?

A That's inherent in the investment banking function, Mr. Farrell.

Q Did you become familiar while at Lehman Brothers with any proposed or actual financings of new oil or petrochemical projectS?

A Yes. While I was employed there they were involved in the proposed financing of Commerce Oil Refining Corporation.

THE COURT: Where is that located?

A This was to be located, your Honor, on the twon of Jamestown in Narraganset Bay.

THE COURT: In Rhode Island?

THE WITNESS: In Rhode Island.

Q How long were you at Lehman Brothers?

A Until January of 1961.

Q And thereafter what did you do?

A January of 1961 until August of 1961 I acted as an acquisitions consultant to NAT Broadcasting Company, and several other companies, and in September of 1961 I formed my own investment banking firm.

Q Are you still with your own investment banking firm?

A Yes, I am.

Q Can you tell me what has been the nature of your business at your investment banking firm?

A We have been involved in most phases of investment banking which would include financing of corporate projects, arranging for mergers and acquisitions, arranging for private placements of debt, etc.

THE COURT: What is the name of your firm?

THE WITNESS: L.M. Rosenthal & Co., Inc.

THE COURT: In New York City?

THE WITNESS: Yes.

Q Does this include the analysis of existing and proposed financing?

A Yes, it does.

Q Have you served as director of any public companies?

A Yes, over the years I have served as director of somewhat more than a dozen public companies.

Q In that connec tion, have you had occasion to consider proposed financing or proposed industrial projects?

A In certain cases, yes.

Q In the course of your experience as an investment banker, have you considered the allocation of equities among participants to ventures?

A Yes, I have.

Q Is that a usual part of the work of investment banking?

A Investment banking, Mr. Farrell, is a sort of a generic term which covers a lot of things. But typically an investment banker in my experience is involved in negotiating between parties and things, things being capital, for one, as to the relative allocation of equity of the contributors to a given project or company or joint venture.

Q This is based on the contribution of those participants?

A Various contributions. In some cases the contributions is pure money, but you have to allocate the pieces in order to wind up with an agreement.

Q In some cases is the contribution concepts or ideas?

MR. UROWSKY: Excuse me, Mr. Farrell, are you going to qualify this witness as an expert or have you concluded?

MR. FARRELL: I haven't completed qualifying him.

MR. UROWSKY: I'm sorry.

THE COURT: I'm going to ask you gentlemen when you confer with each other on legal matters to do so quietly so that neither the jury nor the court reporter nor the Court will hear you. It is perfectly all right for you to confer, but bend over and talk to each other so you don't get it on the record.

When you have finished your examination, if Mr. Urowsky wants voir dire, he may have such.

MR. FARRELL: I think I was in mid-question there. I'm sorry.

Q That was including evaluation of concepts or

ideas that would be contributed to a project? We are talking about allocating on the basis -- if you recall where I was when I was interrupted --

THE COURT: Let's approach it a little differently and perhaps we can save time.

Do persons retain you to give your opinion as to the value of matters which make up part of the organization or re-organization of a business?

THE WITNESS: On occasions, your HOnor. On other occasions we also act as principals in that role.

Q Now, have you or your firm riased financing for projects such as you have just described?

A Yes.

Q Can you give me an approximate figure of how much you have raised?

A We havedone approximately --

Q This is at Rosenthal?

A At L.M. Rosenthal, Inc., we have done public financings in excess of a quarter ofa billion dollars and I really never placed a value on the private financings. They run up pretty high.

Q Now, in preparation for testifying here, did you make a study of any financing or proposed financing of oil or proposed petrochemical projects?

A Yes, I did.

Q Can you tell us what they were?

A Well, I gave particular attention to the facts in Commonwealth Oil Refining Company and the proposed Commerce Oil Refining Corporation.

MR. FARRELL: Mr. Urowsky.

VOIR DIRE EXAMINATION

BY MR. UROWSKY:

Q Mr. Rosenthal, have you ever been involved in a private financing of a major industrial project in the petrochemical industry on the scale of the PHillips Core project?

A It would depend on how you would define, "have I ever been involved." I was employed by Lehman Brothers and used to discuss from time to time with Morris Nadelson, who was the partner in charge, the financing which is rather analogous and a little bit larger than this.

Q Did you ever direct the investment banking services to a client with respect to a private financing of a major industrial project in the petrochemical industry such as the Philips Core project?

A No.

Q Have you ever been involved inthe acquisition

by one company of a major petrochemical facility on the scale of the Phillips Core project?

A No.

Q Have you ever been responsible for managing a major venture capital fund?

A As a pure venture capital fund, no.

THE COURT: I don't quite understand the qualifications in your answer. Is there something about the question that isn't clear?

THE WITNESS: Well, I was responsible for managing a mutual fund, your Honor, which was permitted among other things, to make venture capital investments but we did not as a matter of practice.

Q So that in that connection you do not have any experience in the venture capital field in connection with your work on a mutual fund?

A In connection with my work on the mutual fund, Mr. Urowsky. I do have venture capital experience.

Q Can you tell me what the largest financial transaction your firm, L.M. Rosenthal was responsible for managing?

A Single?

Q Yes, sir.

A Are you talking about public or private financing?

Q Which ever is the larger.

A Two that come to mind there both approximately $30,000,000 each.

Q What were those, public or private financings?

A One was a Eurodollar public offering, the other was a United States domestic public offering.

Q And each one was about $30,000,000 each?

A Correct, to the best of my recollection.

Q Were those offerings of equity securities?

A The Eurodollar was an offer of a convertible security and the domestic was an offering of straight equity securities.

Q Mr. Rosenthal, is it fair to say that most of the business your firm did involved public offerings of securities and not private financings?

A No, I don't think it is, Mr. Urowsky.

Q Can you tell me what the largest private financing you arranged was, your company?

A If I could have your last question read back, to which I was responsive, I think it covered -- I will answer this.

THE COURT: Do you understand the question?

THE WITNESS: I'm sorry, may I ask the reporter to --

THE COURT: Please reframe the question. While he's doing that, may I ask you this:

What was your title or capacity with Lehman Brothers?

THE WITNESS: Associate, your Honor. You're either a partner or an associate and I was definitely an associate.

Q Mr. Rosenthal, what was the largest private financing your company L.M. Rosenthal was involved in?

A I'm having to add up its component parts, Mr. Urowsky. I would make a rough estimate. It's about $100,000,000.

Q Didn't you tell me a moment ago that the largest financing, public or private that your company engaged in--

A I think I said public, I'm sorry. If I answered -- I thought you were referring just to the public.

Q Can you tell us what that $100,000,000 project was?

A Yes. It was creating a joint venture on the development of a whole series of shopping centers for, principally for triple A credit rated tenants to a single entity.

Q Who were the parties to that transaction, please?

THE WITNESS: Your HOnor, it was a private transaction.

THE COURT: Was it publicly announced at any time?

THE WITNESS: No, it was not, your HOnor. Still is not.

THE COURT: Was there any filing with respect to it?

THE WITNESS: No, sir.

THE COURT: All right. I will permit you to maintain the confidentiality as to that matter.

At this time I will excuse the jury. We will have a brief recess. Withdraw to the jury room, please.

(Jury left the courtroom.)

THE COURT: The record may show that Mr. Rosenthal stepped out of the courtroom.

Unless I couldhave an offer of proof as to what else you intend to elicit from him, I'd be inclined to permit him to testify, and call a halt to this voir dire as to his expertise, but I think before permitting him to testify, I should also obtain an offer of proof from Mr. Farrell as to what he intends to elicit from this witness.

Now, I will take you first, Mr. Urowsky. It looks to me as if anybody who worked that long in Lehman

Brothers and has this man's education, ought to be permitted to qualify without necessarily listing the names of his clients as to whom financings aren't publicly known.

MR. UROWSKY: I'd be willing to withdraw that. I didn't realize that it was a confidential matter.

THE COURT: I don't know if it is until I ask him.

You are willing to concede that he can testify as an expert in the field of investment banking?

MR. UROWSKY: I would like to know before I make any concessions, your HOnor, exactly what he is being qualified as an expert in. I think the witness himself testified that investment banking is a generic term. There are people who are engaged in largely brokerage business who describe themselves as investment bankers, others engaged in strictly public underwriting who describe themselves as investment bankers and other people who I believe are engaged in venture capital which is quite different, who also describe themselves as that.

THE COURT: All right.

MR. FARRELL: Your Honor, Mr. Rosenthal will testify that he has reviewed the brochures, both of Prudential and of Phillips, he has reviewed the exhibits and the documents in this case, including some that have not been

introduced in evidence--

THE COURT: Those would have to be made clear, which they are.

MR. FARRELL: He's read them all. He's read all the marked exhibits.

THE COURT: Are there any marked exhibits which are clearly incompetent? You see, it is difficult, when someone says he's looked at something; permissible cross examination is to ask him what did he look at and what did he say and what conclusions did he draw from it and to what extent did he rely on it. That will give us a real field day here.

MR. FARRELL: Your Honor, I think to prepare him he wouldhaveto do that and he will testify that he's done it. Obviously he did not rely heavily on some and relied more heavily on others, and they could cross examine, but I want to make clear to the Court that we asked Mr. Rosenthal to read all the marked exhibits in this case.

THE COURT: Well, I suggest to you that you find out from him what exhibits he's relying on.

MR. FARRELL: I will do that.

THE COURT: If he read something and didn't rely on it, I don't think it has any bearing.

MR. FARRELL: Right.

THE COURT: He could have read the newspaper. All right. Now, what is -- what are you offering to prove?

MR. FARRELL: He will testify that he has evaluated the concepts of it, I won't say the Prudential group, of Shippee, Willey and Young, and the contribution that Shippee, Willey and Young made to the proposed petrochemical complex, and he will say that in his opinion these concepts and this contribution would make a reasonable allocation of 25 percent of the project to them.

THE COURT: I have very grave misgivings about taking that on the trial record that we have here. I think it is permissible for him to examine these matters and evaluate them in money, but you see, joint venture is something that arises by agreement, and I am going to be prepared later in the day, if time permits, to review with both attorneys Mr. Shippee's testimony, Mr. Anderson's testimony, which is the only testimony I have now on the joint venture, of the making of it, the terms of it, who was to put in what, who was to take out what, what the shares of lossess and shares of profits would be. I don't even reach beyond that to the further question of whether there is such a thing as having a joint venture to become shareholders in a corporation to be formed or even a corporation that has been formed.

And I have very serious misgivings about taking that type of testimony in front of this jury.

MR. FARRELL: Well, he could put a dollar value on it by making an analysis from the financial statements of Puerto Rico Core.

THE COURT: You were going to tell me, and I know I gave you no deadline by which to do it, in fact I think I only mentioned it before the luncheon recess, but I had asked you to verbalize and state for the record what you consider to be the legally protected concept or material relating to a petrochemically-oriented refinery in Puerto Rico which had been conceived, formulated or developed by Prudential Connecticut.

MR. FARRELL: I will be prepared to do that your Honor but --

THE COURT: You will have to put that in simple English before this witness can attach anything to it.

MR. FARRELL: I agree with you, your HOnor. I was going to ask the witness the concepts that he understood Willey, Shippee and Young --

THE COURT: Maybe I should take your offer of proof in this regard in the absence of the jury and make a ruling on something concrete.

MR. FARRELL: You mean on his actual testimony?

THE COURT: On whether it is competent proof in this trial and properly admissible for an expert to come in and say that he's evaluated their share of the joint venture and that their share of the venture was entitled to receive 25 percent or "X" percent of the equity.

MR. FARRELL: Your Honor, there had been no way of evaluating a concept except by evaluating the result of that concept. Now, the result of that concept -- and this is up to the jury to decide, but if our case is believed, the result of that concept was that Phillips was able to obtain a quota allocation on which they based the petrochemical complex when that particular project had foundered for two or three years.

THE COURT: I agree in all that. It has a right to be reduced to dollars, but I do not see that there is any basis in this record by which any witnesse, even if he did come from Lehman Brothers, can get on the stand and say that under these circumstances the reasonable value of this contribution was 25 percent of the equity. I just don't see how you can do that. But I want you to make your record here with me so you won't have any problems in your record.

MR. FARRELL: WEll, your Honor, I understand that, but it appears that to put a dollar value you would have to refer to the actual resulting project. Now, if he

put a dollar value on it, he would be forced to do that from the financial statements of the Puerto Rican Core. There is no other way of putting a dollar value on a concept because if the concept, obviously if the concept had never been acted upon, and it was just floating around as this project had been before Mr. Shippee and Young and Willey got into it, there probably wouldn't be any way of evaluating it. But in this case, according to the plaintiff, the concept was in fact used.

The result was a petrochemical project. And how you can connect, how you can value the concept without connecting it to the project or to a percentage of an equity in the project I don't know.

THE COURT: Everything that can be bought and sold has a resaonable value. And there's somebody alive who can appraise it, even if it is only the jury in this case.

All right, you defendants are being strangely silent here. What do you say?

MR. MacCRATE: Your Honor, the basic problem is there is absolutely no proof in this record as of today that this quote concept that is yet to be articulated by Mr. Farrell found its way into the Core. And they're jumping right over everything that intervenes, all of the

negotiations that occurred, and saying that whatever is in Core, we don't really know what's in Core, but that contains the concept.

THE COURT: Something came from -- and I don't like to fall into this eroneous nomenclature, something came from this Shippee group to Chapman or Phillips or both. What it was, how significant it was, what value it had or what they did with it are all fair grounds for litigation here. I think the best practical way to proceed here, is to excuse this jury for the balance of teh day, and take Mr. Rosenthal's offer, take the offer of proof by question and answer, and then perhaps we can all discuss it more intelligently and if it is competent evidence, then I will permit you either to ask him the same things tomorrow morning with the jury, or if you want to do it that way, you can have it read to the jury first thing, and then he can proceed further.

I don't insist which way you do.

But I do not want to admit evidence which might be so prejudicial that it would taint a subsequent verdict and I want to be absolutely sure that I'm on proper ground in taking this type of testimony.

I'm not concerned about his expertise. I think counsel are entitled to complete this voir dire, but I think

in the final analysis I'd let him testify.

MR. UROWSKY: May I interrupt for just a moment, your Honor.

THE COURT: The jury is always entitled to be instructed, if they don't believe he's qualified they shouldn't give any weight to his opinion. I know the man spent several years at Lehman Brothers, but what he's being asked to testify to, as far as I can tell, is the value of an idea in the petrochemical field. And he just testified as to the value of a concept or the share that someone producing such a concept would recieve, and I'm not sure he's qualified to give an assessment of that. He has just said he has never taken part in a major financing in the petrochemical field at all.

MR. FARRELL: Your Honor, he has testified that he's been involved industrial situations. This is an industrial situation.

THE COURT: He's the type of fellow you would go to if you were seeking to resolve a transaction of this sort where there was conflict of interest or divided loyalty or something which prevented you from bargaining it out at arm's length. That is two traditional stories, to go get a letter from Lehman Brothers or somebody else and he's the fellow they would assign to it, to write up what

a reasonable and fair merger is, where it is between a parent and subsidiary, or things of that sort, and I let him do that, and you can argue to the jury about how inadequate his expertise is. I think we'd best excuse the jury for the day, and I will proceed further with Mr. Rosenthal by question and answer form, to get your offer of proof before me, so I can rule properly on it.

MR. FARRELL: Your Honor, are you going to hold a brief recess?

THE COURT: First I want to excuse the jury, then I will hold a brief recess.

MR. FARRELL: Thank you.

THE COURT: Would you bring in the jury.

(Jury present.)

THE COURT: Members of the jury, it develops at this time that we have some matters which we have to attend to in your absence which may take quite a few minutes and for that reason, and in view of the hour, I am going to excuse you now for the balance of the day, and I ask you to please return here at 10:30 tomorrow morning, at which time I hope to proceed promptly.

Please withdraw from the courtroom.

(Jury left the courtroom.)

THE COURT: Five minute recess, gentlemen.

(Recess.)

THE COURT: I think before Mr. Rosenthal comes back into the courtroom we had some discussion earlier in the case about election of remedies and all that but I think I am at that point where I must ask you to elect to the extent of verbalizing for the Court precisely on this record as we have it here what you consider to be the legally protected concept or material relating to a petrochemicallly-oriented refinery in Puerto Rico, conceived, formulated or developed by Prudential Connecticut.

I would like you just to give me that in nice simple English, the kind a jury would understand.

MR. FARRELL: Yes, your Honor.

Up to October 1962 the project was dead or floundering. In October 1962 when Messrs. Shippee, Young and Willey became involved with the proposed project, they formulated several concepts which they believed would enable the promoters or the actual major petroleum company who was involved to obtain the backing of the EDA and a quota for the importation of foreign oil which was necessary to the success of the proposed petrochemical project in Puerto Rico.

Those ideas or concepts were that the petrochemical facility be designed to produce a maximum of petrochemicals and be somewhat flexible in being able to

reduce the amount of petroleum and increase the amount of petrochemicals as demand for petrochemicals increased.

Two, that the feed streams from the petrochemical project be encouraged to be kept on the island of Puerto Rico, either by a quasi public utility concept or a right of first refusal for all plants in Puerto who wished to use feed streams from the Core plant.

That the promoters or the corporation operating the Core plant promote and induce the further investment in satellite plants which would utilize the feed streams from the Core plant and, last, that because the first three concepts or ideas which I have enumerated would be sufficient to persuade both the EDA and the Department of the Interior that this proposed Core plant was not simply a subterfuge to install a third refinery and benefit from an import quota for foreign petroleum, it would not be necessary to obtain a contract with a major chemical company in advance of the construction of the Core plant to take the feed streams from the Core which had been a stumbling block up until Prudential was asked to join the venture.

That is it, your Honor.

THE COURT: Ask Mr. Rosenthal if he would come back in, please.

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MR. FARRELL: You asked the concepts and that is what I said.

We also take the position --

THE COURT: I was reading from Paragraph 4 of Court Exhibit 1 which I have done several times.

MR. FARRELL: Right. I just wanted to add that that is not our only complaint here.

We also were moving ahead on the project and had worked with certain people including Phillips and Chapman and Coan and therefore it was not only the concept that Phillips stole, they really dismantled the whole project but you asked the concepts and I gave them.

They copied the brochure which was protected material because we claim of our confidential relationship with Phillips.

THE COURT: But the protected material in the brochure, aside from the English which is well written but rather common English, is these concepts, isn't that so? The valuable material in the brochure is the concepts?

MR. FARRELL: Yes.

THE COURT: If they merely infringed your copyright on the brochure you would accept the statutory penalty in such a case.

MR. FARRELL: That is right, your Honor.

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THE COURT: All right.

L A U R E N C E M. R O S E N T H A L , resumed.

MR. MARKS: May I approach the side bar a moment? I am sorry.

(At the side bar.)

MR. MARKS: I am now referring to the agreement between Phillips and EDA and I think what your Honor ought to be aware of is that the concepts described by Mr. Farrell are in the final agreement with EDA. That is incorporated in this agreement, the contractual right of --

THE COURT: Please don't anticipate your adversary's argument.

MR. MARKS: The point you made earlier was that you haven't seen where these particular ideas have been implemented in the final project.

THE COURT: I didn't say that.

MR. MARKS: I am sorry.

THE COURT: I think Mr. MacCrate said that.

MR. MARKS: J-45 is the agreement and I think a fair reading would show that these materials are inthere.

THE COURT: One thing I don't follow up on, if I understand correctly, Coan and Chapman were working on this before Prudential came into it so as far as taking over --

MR. MARKS: Unsuccessfully.

THE COURT: But as far as defendant taking over Coan and Chapman, the presence of Coan and Chapman in this picture was not something in which Prudential may have a certain proprietary right.

MR. FARRELL: If I may have a half minute I will give you a position on that.

Coan and Chapman prepared or had prepared certain studies and reports which they gave to us. We used them in developing our brochure which had the new concept.

However, our position is that once we brought the concept to Phillips and offered it to them in a confidential relationship, that even though these ideas did not originate with us, that is the prior material, they were not free to simply take everything that we had given them and use it.

THE COURT: You see the question who owned the concepts or had originated the concepts --

MR. MARKS: The testimony is that the Prudential group originated this concept which was a change from what had been done before.

THE COURT: I understand that but Mr. Farrell suggested in his discussion with me, and I don't mean to

paraphrase him, Prudential also had been wronged by the fact that Phillips took over Coan and Chapman and used them in furtherance of this project, took over whatever ideas or whatever headstart they had and I don't think that is an item as to which Prudential may claim to be aggrieved in this case.

MR. MARKS: I'm not at all sure.

THE COURT: Your contention is at least this was within the four corners of Item 4 of the issued to be tried here, just the matters which Mr. Farrell just enumerated for the Court and which I attempted to write down practically verbatim on my pad.

MR. MARKS: But with Mr. Learned's letter of November 1962 which was introduced, that established the confidential relationship without anything more. At this point the whole group of people were working with us on this project.

THE COURT: Prudential didn't have --

MR. MARKS: The letter was addressed to Prudential.

THE COURT: But Prudential didn't have any proprietary interest in Coan and Chapman. They were not employees or agents of Prudential as far as this matter shows. They were out paddling their own canoe to put it

in the vernacular and had their own schemes and plans and own ideas for which they were looking for an opportunity of exploitation and I don't see a breach of any obligation owed Prudential by the fact that Phillips dealt with Chapman or Coan or exploited any of the concepts or materials develped by Chapman and Coan.

If you think otherwise, I think the first thing in the morning you better be prepared to explain it.

I want to go ahead with Mr. Rosenthal.

MR. MARKS: I do think otherwise but it is not necessarily dispositive of the issue you raised.

THE COURT: The Coan-Chapman contributions toward the Core project were not something in which you have any either alleged or proved that Prudential had any proprietary or prtected right of any kind that I can see.

MR. MARKS: I understand that but Coan was paid as a consultant and Mr. Chapman was paid as a lawyer. In that sense they were being paid fees for professional services.

THE COURT: They did not develop these concepts which you have just been enumerating.

MR. MARKS: No.

THE COURT: Phillips was dealing with them after Phillips decided to pursue what they refer to as independent

course was not a wrong to Prudential.

MR. MARKS: I'm not sure of that.

THE COURT: I'm not making that as a ruling but as a rhetorical question.

MR. MARKS: When we come together with a group of people with some concepts and they take the concepts and the people I am not sure you can separate --

THE COURT: But the people didn't belong to you. You will have to take this up again tomorrow. I want to proceed with Mr. Rosenthal.

(In open court.)

THE COURT: I will suspend the voir dire as to his expertise and ask you to assume that he is going to become qualified as an expert and tomorrow morning the voir dire may be resumed and that may be resumed without prejudice.

Now, I will permit you by question and answer form to give me the offer of proof that we have discussed earlier.

OFFER OF PROOF

EXAMINATION

BY MR. FARRELL:

Q Mr. Rosenthal, in preparing to testify in this case did you read documents that had been marked as exhibits

in this case?

A Yes, I did.

Q Can you describe them, not the exhibit numbers, can you tell me what documents you read and relied on?

THE COURT: For the purposes of the offer today I won't require you to enuerate the exhibits he relied on. I will allow you to assume for the offer of proof that he read and relied on all exhibits that have any bearing on the subject matter of his testimony.

However, if I do take the offer of proof, the evidence in front of the jury, you will be required to show me what ones he relied on.

MR. FARRELL: Thank you, your Honor.

Q Mr. Rosenthal, having Read those exhibits are you familiar with the concepts of Messrs. Shippee, Willey and Young and which they offered to the proposed petro-chemical project?

A I believe so.

Q Can you tell me what they are?

A I think they were mainly the fact that it was not essential to have back-to-back chemical plant commitments in order to get the allocation under the import program.

If you designed a basic plant which looked

toward maximum flexibility on petrochemical output as opposed to full output, you would then be able to have this be a core utility kind of concept with the petrochemicals available on Puerto Rico, hopefully to attract chemical users to make use of them on the island and make additional capital investment and create additional employment and that the promoters or the conceivers of the scheme would work along with the Government in trying to attract said chemical companies once the petrochemical output existed.

Q Based upon your review of the exhibits and your understanding of these concepts, do you have an opinion as to the worth of those concepts in allocating a share of the project, equity in the project to Messrs. Shippee, Willey and Young?

A Yes. But it took some time to get to them, Mr. Farrell.

Q What did you do to get to them?

A I studied two relevant cases which I considered relevant and that is Commonwealth which I mentioned before and Commerce which had many similar characteristics.

Studying the net results of those and the arrangements in them, together with my own experience, I came to the conclusion that the value of both presenting

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the concepts to Phillips which ultimately worked and catalyzing Phillips to actually get moving and get the import quota and produce the plant, was worth a 25 per cent equity in the plant.

(Continued on next page.)

MR. FARRELL: Your HOnor, that's the heart of it.

I could ask him one or two other questions.

BY MR. FARRELL:

Q How did you arrive at the figure 25 percent?

A The devlopers of the concept in Commonwealth, which was at that time the principal refinery on the island, your Honor, basically received 43 percent of the equity.

THE COURT: You say basically.

THE WITNESS: Received 43 percent of the equity.

THE COURT: What did they put in in order to receive it?

THE WITNESS: The terms of capital it was two and a half percent, the initial capital, but that figure is misleading because among the promotors was First Boston Corporation and New England Fuel, each of whom also took out fees, so it would be less than two and a half percent if I deducted their fees which were round robin.

In Commerce, which was a very similar situation, it was a different concept.

THE COURT: Let's stick with Commonwealth.

Isn't it so that one of those principals agreed to buy or gave what has been loosely referred to in this case as a back to back contract for output?

THE WITNESS: May I refer to the prospectus, your Honor?

THE COURT: I'm asking you from your memory. Isn't it so that New England Petroleum agreed to become a principal customer of what Commonwealth would produce?

THE WITNESS: Yes, it is so.

THE COURT: All right.

THE WITNESS: But, I believe it was also so, your Honor, that the -- I was going to say tonnage, but there is a different word, but the output in relationship to the requirements of the total New Engalnd market was not very significant and I didn't consider New England Petroleum's commitments to be an essential aspect of it.

The concept there, as I understood it, was principally the idea of locating a refinery on United States flag-protected soil, which was close to the source of crude in the Caribbean, this case being Venezuela.

THE COURT: Were there import quotas when that was built?

THE WITNESS: To the best of my knowledge, there was a voluntary import quota program, but they were not mandatory.

BY MR. FARRELL:

Q Was there anything else that you considered in

reasching the 25 percent figure, Mr. Rosenthal?

A Yes. I considered the case of Commerce, which again was a conceptual development; the idea being to place a refinery now directly in New England at a point on an island where it could receive the new developing class of ships called super tankers, and the financing was set for that.

The promotors who put up in this case, your Honor, a pro forma, one point some odd percent, the bulk of which went to purchase the land for $600,000 of the total capital, were receiving 33 percent.

Now, Commerce was never built, because of what amounted to probably the first major environmental litigation, and that was despite the fact that Gulf Oil Company had given both supply contracts on one side and take contracts on the other side. But I think that the elements of Commerce are very similar to the elements in this case.

Thirdly --

Q What di dyou say --

A 33 percent to the promotional group.

THE COURT: Who was the promotional group in Commerce?

THE WITNESS: The promotional group in Commerce were two individuals by the names of Geller and Lewis, I

believe, and Lehman Brothers, and some clients of Lehman Brothers.

And they put up an aggregate of $910,000 of which $600,000 went to purchase the land. And then I further considered the fact that in Prudential's brochure itself, which outlined the elements of Prudential's plan, they had proposed four out of 11 million shares or 27 percent, as being the promotots or conceptualizer's share and certainly one would never come to a conclusion that one is entitled to more than he's asking, and so I took the 43 percent in Commonwealth and 33 percent in Commerce, 27 percent asked for, there plus the normal give and take of bargaining and came to a conclusion of 25 percent.

MR. FARRELL: That is the heart of it, your Honor.

THE COURT: All right. I will take a very brief recess, unless someone wants to say something more, in which case I will excuse Mr. Rosenthal and any attorney who wishes to be heard may do so.

MR. MacCRATE: I would like to say something.

THE COURT: Please understand, my purpose in excusing you is so that nothing that a lawyer might say in discussions with the Court would be deemed to have any suggestive effect on any of your possible answers. I don't

say it would, but I don't want to create that atmosphere.

THE WITNESS: I take no offense at the mechanics of justice.

MR. FARRELL: If I may make one further -- I think I can make this as an offer without asking a further question.

THE COURT: Go ahead and ask him.

BY MR. FARRELL:

Q Mr. Rosenthal, have you also calculated the reasonable value in a dollar figure?

A Yes, I have.

Q And how did you do that?

A I did it by two separate ways.

Q Can you tell us one at a time, the two separate ways?

A May I refer to the -- I can tell you, but it's so much easier if I look at the documents.

Q Which documents?

A The earnings statements right here.

Q Exhibit 320.

A I took the profits of the plant, once it got onstream, for the first three years, which was 1969, 1970 and 1971 and I averaged the three years. This is the profits as reported in the financial statements. I then took a

multiple of ten.

Q Why did you take a multiple of ten?

A Before I took the multiple of ten, I took into account a whole variety of things, including, one, the fact I was dealing with a pre-tax number because of the tax exemption, I took into account that you were operating under a special quota, which might have a life of ten years, I took in all the relevant facts I was then aware of vis-a-vis that earning stream.

Then I took 25 percent of that and cut that in half. The reason I cut that in half was for all the negatives which Mr. Urowsky -- I didn't mean to be humorous -- I'm sure was going to point out which was that you had a minority interest, you were bound to re-invest on the island, although, as I understand that agreement, there were no restrictions on removal of profits from any of the outlet facilities that would come. I took that into account.

Had the nylon plant worked out, I don't believe, as I recall the agreement, that there would be any restrictions on having taken profits from the nylon plant.

And that was one approach and I came to a number.

Then I took another approach. I think Mr. Young very eloquently testified that he felt the -- pardon me, I mean Mr. Walker, I'm sorry.

THE COURT: Really, you should have been excluded from the courtroom when Mr. Walker was testifying. You were here just this afternoon, were you?

THE WITNESS: Yes, sir.

THE COURT: All right.

A I would have had to go to somebody like Mr. Walker for my answer.

THE COURT: All right.

A The other approach was, it was clear to me that, assuming the facts found, that indeed the Prudential group gave Phillips the idea, and without the Prudential input Phillips would never have gotten the quota and never would have built the plant, it is clear that Phillips did not want the Prudential group as partners, because otherwise they would have invited them in before they built the plant.

Therefore, I had to come up with some value for the quota or for that which was created, and would have had to go to an expert in petrochemical business. Mr. Walker testified earlier that that value was $27,000,000.

Now, in a bartering session with people trying to come to a satisfactory conclusion, I could sell see that, all right, Phillips was going to get the benefit of the idea and the concept, it was going to have all the benefits of the plant and continued ownership in any of the satellite

plants that grew up, but at least for giving them the idea and initiating this thing and taking it out of a dead archive, Prudential was entitled, by the group, conceptual group, was entitled to half of this value.

Mr. Walker suggested it was $27,000,000. Half would be $13,500,000.

Under the other formula I come up to 14,100,000. They are both very close in terms of dollar values.

THE COURT: All right. I think I can excuse Mr. Rosenthal for the day.

THE WITNESS: Thank you, your HOnor.

(Witness excused.)

THE COURT: I don't like to fly around from one issue to another in this matter, but I had neglected in my haste to resume with Mr. Rosenthal to make a further observation that my recollection of the testimony concerning Coan is that he either directly or through Warburg sought out Prudential and I don't see how Prudential can claim the right to be compensated for bringing Coan as an independent contractor into see Phillips. I just don't see --

MR. FARRELL: That was what you discussed before with Mr. Marks.

THE COURT: Yes.

MR. FARRELL: We are past that and we understand your position.

THE COURT: I have no position, I am trying to stimulate discussion so I will understand the problem. I ought to talk with you about one more thing. How about requests to charge?

MR. FARRELL: You mean the requests that we are all preparing?

THE COURT: Yes, to charge the jury.

MR. FARRELL: We are working on them.

THE COURT: When do you think the Court will have them?

MR. FARRELL: Monday morning. Tomorrow, if possible.

THE COURT: All right. Now, I said I would hear Mr. MacCrate and I will do so.

MR. MacCRATE: Your Honor, as I have been listening to this offer of proof, what has confused me, and I state parenthetically I do have a personal knowledge of at least one of the transactions to which he referred --

THE COURT: Let me interrupt you right there. I think these published documents ought to be made available. He says he is relying on prospectus and so forth that he mentions in his offer. They should be made available.

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MR. FARRELL: He's got them. Shall I chase him?

THE COURT: See what you can do. You don't have to leave the courtroom.

MR. MAcCRATE: That what is being spoken about are promoted projects where parties actually enter into a formal arrangement to promote together a project, a genuine joint venture, and based upon that, at the time of entering, they strike a bargain, and it is not a valuation of a concept that is involved here; what Mr. Rosenthal is talking about is totally foreign. The notion that there was an underlying concept in Commonwealth that someone contributed, which was assigned a value, is totally removed from the actual facts.

There you had these various parties, Admiral Carter and the First Boston Company and the New England Petroleum pepole coming together, and developing a program in which they agreed on the shares that each would have.

THE COURT: You cannot address me on the issue of whether the expert is comparing apples with oranges. That is a question to be elicited on cross examination, and it is a matter for the jury.

MR. MacCRATE: But, your HOnor, it is highly prejudicial to the defendant to have someone testify about

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what are joint venture concepts, where there has been a promotor group formed and reach agreement as to how percentages would be shared, presented in the context of purporting to assign values, which will then be bandied all around, about concepts that have not to this time been demonstrated either to have been in the Prudential brochure, or to have ended up in court.

Even if you go as far as to accept all of the demonstrations that it came into the hands of Phillips and that these enumerated concepts that we have heard of this afternoon came as far as Phillips, the next step of their utilization is not a part of this record at this time.

THE COURT: Well now, I must delve into that in greater detail, and I am going to ask plaintiffs' counsel to leave tonight the materials which it is alleged Prudential gave to Phillips and the materials which Chapman or Phillips filed with the Oil Import Administrator, because it's been suggested to me many times in argument, and it's been suggested by questions proposed to the qitness, that a great deal of this material was in the brochure which Phillips, through Chapman, delivered to the bureaucrats in Washington when they went for the oil import quota.

MR. MacCRATE: Your Honor, the brochure was in fact discarded in January of 1964, that has this parallel

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language in it, and it was superseded at the joint suggestion of EDA and Stanley Learned.

They did not like this that had been taken down for that visit, and the piece that was presented to the Oil Import Administration is a new document, based upon the presentation that was contained in that one letter of December 16, 1963 by Mr. Learned to Mr. durand, and that letter, as Mr. Diaz-Hernandez explained yesterday, was taken by him and presented to Durand and yesterday Mr. Diaz-Hernandez told us about Mr. Durand's reaction to that. That is really the kernel of what is carried forward, and that is a hundred percent Phillips'.

MR. FARRELL: Your Honor, I would like to point out that when Phillips came to Mr. -- I gues it was Van Hyning, with the brochure that had the verbatim quotes in it, Mr. Van Hyning suggested -- it was Mr. Van Hyning, according to his testimony -- suggested that it be rewritten. It was not, according to Mr. Van Hyning, on whom Phillips is going to rely, I understand, Phillips' suggestion that it be rewritten. It was rewritten through the --

THE COURT: You see, I finally got you to articulate the concept.

Now, will you show me by document or some other fashion, how the concept was actually used by Phillips before

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the Oil Import Board?

MR. FARRELL: Before the Oil Import Board is a little difficult. We have hearings before the Board. I cculd quote from Mr. Keeler --

THE COURT: Didn't they file an application with the brochure attached?

MR. FARRELL: The brochure was filed after the original brief. The original application said almost nothing. It was very short and I think I read it the other day.

THE COURT: The papers that were given to the Oil Import Board, did those papers contain the concept as you have just expressed it earlier today?

MR. FARRELL: Yes, it did, your Honor, and moreover --

THE COURT: What is the exhibit number? And hand the exhibit to the clerk.

MR. FERRELL: There are two other exhibits, your Honor. There is also Joint Exhibit 50, I mean, Joint Exhibit 85, which is the agreement between Phillips Petroleum Company and the Puerto Rican Industrial Development Company and the Economic Development Administration, which incorporates some of it, as well as the brochure, and there are also some defendant exhibits which illustrate the concept,

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the use of the concept, which I would also like to give you. I'd have to find that one exhibit.

For example, there is an exhibit which projects a reduction in the production of petroleum products by the Core and an increase in petrochemicals. That also is the same idea.

I don't think I can limit it to just one or two documents, your Honor. That is my point. But I will be glad to leave them and point them out to you.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: I will take a very brief recess.

(Recess.)

THE COURT: I don't want to delay further on the question of the offer of proof by Mr. Rosenthal's testimony.

I could see that it could be reasonably argued that if comparable transactions can be found, in which persons dealing at arm's length allocated proportionate value for comparable concepts, that based on those, an expert could testify to a value, or a percentage. I think this line of proof is subject to a great deal of infirm itself; wholly apart from the fact, as I mentioned earlier, I think he's comparing apples and oranges.

But I think that does not necessarily make it

inadmissible. It is proper ground for cross examination, and it has to be clear, and I trust it will be after the witness finishes testifying, he is testifying about agreements other people reached. He is inferring that their situations were the same, that their concepts were of equal weight, and that they allocated their values fairly, and ultimately it becomes a question for the jury, as to whether the testimony is entitled to any weight at all.

I'm bothered by it. I have to say to you that from what I have heard so far, I think a jury properly should find it of no weight. But I think it involves a fact finding process which is properly entrusted to them and not to me, so I am only concerned with admissibility.

I believe I should take it.

MR. MacCRATE: I respectfully submit that Mr. Rosenthal is being advanced as a substitute for the jury.

THE COURT: That they now allow you now under these new rules. Now they allow a witness to do that. These scholars who rewrote the rules of evidence would permit, oh, it is amazing.

MR. MacCRATE: I understand, your Honor, that in certain situations the ultimate question can be testified to, but here he is being asked, have you looked at the evidence in this case?

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Now, you read the evidece; you come to your conclusion, after reading the evidence, and --

THE COURT: He won't be asked that. He can be asked what exhibits he relied on, where he found the concept, where he found how it was used. I won't permit him to testify as to how they should decide the case. I thought that part of the offer I had permitted Mr. Farrell to tell escope his inquiry, just to save the Court's time. The rule is Rule 704.

MR. MacCRATE: I understand, your Honor.

MR. FARRELL: That's right, your Honor.

MR. MacCRATE: But there is also testimony in this case, and to the extent that the testimony impeaches the offer of proof, where does that leave us in cross examining the wit..ess?

THE COURT: This man could be cross examined for a whole day, and I think it is frightful, frankly. But I do not believe that it is proper for me to rule that they can't proffer the evidence. He can be asked, if it shall appear that such and such is the case, would his conclusions as to percentage be different.

MR. MacCRATE: What if his conclusion as to the concept differs from the plaintiff's statement of the concept?

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THE COURT: That has a very strong bearing on the weight of his testimony and if it is absolutely unrelated then I suppose the testimony is no longer competent.

I don't see how he can reach or apply or derive from those other cases a percentage for this transaction, but I am not about to usurp the function of those very patient people who have been sitting in the jury box. I think it is admissible.

MR. FARRELL: Thank you, your Honor.

MR. JEMISON: If I may be heard on this, I have recently been involved in market value litigation where considerable evidence was given by both parties to develop what would be referred to as comparable sales and the Court in that instance felt it was the function of the Court to determine whether a particular sale would be deemed a comparable sale before it would be admitted and I suggest, although I have no authority at the moment that I can lay before the Court, that this is a function for the Court in initial --

THE COURT: It depends, of course. If you are dealing with a diversity case which of course we are here, sometimes there is case law as to the period of time or the distance, if you can talk about ordinary real estate comparables.

MR. JEMISON: Yes.

THE COURT: I think that no doubt is true but here the jury is entitled to be told these are the concepts on which he relied in reaching his opinion and if they find that his assumptions are unwarranted and his opinion unfounded, it is entitled to no weight.

MR. JEMISON: The particular concern in the litigation I have been involved with had been when did these transactions take place. If they are remote by two

or three years, if they are remote by location, one being here and one a thousand miles away, it seems to me, your Honor, you do reach a point where the Court must rule on the issue of the initial comparability of these values.

THE COURT: I am sure you do reach that point. I don't think that the testimony as offered here is quite within that area. Evidence is generally considered admissible if believing the evidence would make a material fact more likely than unlikely.

MR. JEMISON: If you were to examine the comparability of matters that have been suggested at the moment, I suggest, your Honor, you will not find one of them that involves an obligation to a Commonwealth or to a State, that not one of them will have a reinvestment obligation.

THE COURT: I am sure that is so.

MR. JEMISON: Not one of them will require you not only to make the initial investment but obligate yourself for an additional $55 million investment in other matters.

THE COURT: I am sure that is so, Mr. Jemison.

MR. MacCRATE: This witness' statement that he has to turn to someone else for any expertise in the petrochemical business, he is not qualified to testify

about the value of petrochemical concepts and that is what we are talking about. If we are talking about anything in the way of concepts --

MR. FARRELL: He didn't say he turned to someone else.

MR. MacCRATE: Otherwise it is a concept, if you want to take something out of a field and you have the idea that you take it out by a truck. If it is something that has a special quality relative to petrochemicals, he defers to Mr. Walker as he did right in the middle of the offer of proof.

MR. FARRELL: He only did it for the value, your Honor, for the quota from which he had to figure the final total amount.

THE COURT: It wasn't really explored with Mr. Walker but I wrote down what he said. I told it to you once, the 27 million for getting it organized and getting all the special credits and among the special credits he included the permit.

Now, this record shows that Phillips at least did something with respect to getting all the special credits, their management did something; Chapman did something, I dare say Coan did something. The EDA did something.

All of that 27 million is not attributable to Prudential's efforts viewed most favorably to Prudential and you can't fault defense counsel because the last thing they wanted to do is get an adverse witness and make him their expert so they left him alone and were entitled to do that.

Assuming he is correct that this 27 million is attributable to getting it organized and put together, some of them is attributable to Prudential and a great deal is not. Some is Chapman's efforts and I have been through this all. I don't need to repeat it.

I think this testimony which is coming in is very likely to wind up a disaster but that doesn't make it inadmissible.

MR. FARRELL: Thank you, your Honor.

(Adjourned to Thursday, January 15, 1976, at 10.30 o'clock a.m.)